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HAZARDOUS MATERIALS TRANSPORTATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE TRANSPORTATION OF HAZARDOUS MATERIALS

JULY 25, 1990

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HAZARDOUS MATERIALS TRANSPORTATION

WEDNESDAY, JULY 25, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel; Sheryl W. Washington, professional staff member; and Gerri Hall, minority professional staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The Surface Transportation Subcommittee will please come to order.

For more than 5 years a hearty debate has been waged regarding the reauthorization of the Federal Hazardous Materials Transportation Act. This statute, which governs the transportation of virtually all hazardous materials ranging from paints to gasolines to chemicals to nuclear materials, has not been modified significantly since its adoption in 1975.

Fortunately, the Federal program has worked relatively well in preventing the most serious of accidents; however, it can be made to work even better. There seems to be a growing recognition of that fact among industry, states and localities and certainly the Federal Government.

In an effort to determine what needs to be done to improve the safety of such transportation, our committee has taken a number of steps. At the outset we requested the Office of Technology Assessment, or OTA, to analyze the Federal HAZMAT program and provide us with recommendations for needed improvements.

OTA identified as the largest unmet need in this area the creation of a program to provide assistance to states and localities in training of emergency first responders. Of the Nation's 2 million police and firefighters, 1.5 million were identified by OTA as inadequately trained to respond to HAZMAT accidents.

Additionally, during the last Congress, our committee held three days of comprehensive hearings on HAZMAT transportation. These hearings revealed support for creation of a regional HAZMAT response team, for increased enforcement against HAZMAT violations, and for efforts to promote greater uniformity in HAZMAT regulations, among others. Unfortunately, even after all of these years of give and take on this issue, it appears that we have yet to

achieve a total consensus on all the issues which have divided the interests and parties that are affected.

It would appear, however, that there is a growing consensus among many of those involved on central issues. Today's hearing is intended to update our committee records so that we can determine whether it is possible to move ahead on these issues even yet this year.

In my view, every effort should be made to act now to strengthen the HAZMAT programs in those areas where there is sufficient accord. I intend to do all that I can to advance that prospect. It is my hope that this may lead to consideration of consensus legislation during the Commerce Committee markup session that is scheduled for next Tuesday.

Today's witnesses encompass a broad range of interest ranging from my colleagues in the Senate and the House as well as a representative of the Department of Transportation, shippers, carriers, State government, labor and emergency response personnel. We will look forward to their expert testimony after calling on my colleagues on the committee for any opening statements that they might have.

I am very pleased now to call upon the Ranking Member of the committee, the Senator from Wisconsin.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I thank you.

During this hearing we will receive testimony from a wide range of interested parties concerning the safe transportation of hazardous materials. Of great interest to me and many of these witnesses is what we can do to be better prepared when transportation accidents involving hazardous materials do occur.

Wisconsin has some 600 spills of hazardous materials each year, with about 50 percent of them relating to the transportation of such materials. Other states have similar problems. Most of Wisconsin's spills are of petrochemicals followed by insecticides and then pesticides. The Bhopal, India tragedy, while it did not involve transportation, shows what could happen when a catastrophic accident involving hazardous materials occurs.

I think it is important that throughout this hearing and the deliberations on the reauthorization of the Hazardous Materials Transportation Act that we retain a balanced perspective on the hazardous materials transportation issue.

Mr. Chairman, I look forward to the testimony of our witnesses today, beginning with our two colleagues. All of us share the concerns, Mr. Chairman, that you outlined in your statement, and you can be commended for calling these hearings today.

Senator EXON. Thank you so very much, Senator Kasten.

I would like to read into the record now a statement that I was asked to recognize by the Senator from South Dakota, Senator Pressler. Anton Pressler, Senator Pressler's father, passed away this past weekend, and Senator Pressler is in South Dakota this week attending the funeral services.

Although he is unable to attend this hearing, the Senator will submit a statement and may have some questions for the record

when he returns to Washington. If so, I would appreciate the witnesses who are at the table now and any others who may come before the committee today to respond to those questions as quickly as they can.

I also have a statement from Senator Danforth for the record.

[The statements follow:]

Jack Danforth

STATEMENT BY SENATOR JOHN C. DANFORTH
SURFACE TRANSPORTATION SUBCOMMITTEE HEARING ON
REAUTHORIZATION OF HAZARDOUS MATERIALS TRANSPORTATION ACT

July 25, 1990

I welcome today's hearing on reauthorization of the Hazardous Materials Transportation Act. Missouri lies at the transportation crossroads of the nation. Kansas City is the second busiest railroad hub in the nation, followed by St. Louis. No fewer than five interstate highways cross the State of Missouri.

Missourians cannot escape the fact that major transportation activity means major hazardous materials activity. Two-thirds of all hazardous materials shipped in the United States are transported by rail or by trucks. Barges, travelling on rivers like the Mississippi and the Missouri, carry the third largest amount of hazardous goods.

In April of 1989, Senators Bond, Kassebaum and I introduced S. 728, the Hazardous Materials Transportation Amendments of 1989. This simple, straightforward bill responds directly to serious safety concerns raised by our constituents in Kansas and Missouri.

It also addresses lessons learned from our experiences with the rail shipment of radioactive wastes from the damaged Three Mile Island nuclear power plant in Pennsylvania to the Department of Energy's research center in Idaho Falls, Idaho.

Specifically, S. 728 would require the following:

1. Mandatory Use of Dedicated Trains.

Currently, shippers can decide to transport railcars carrying high-level radioactive materials on "mixed" trains, transporting everything from dangerous chemicals to grain. The choice to ship Three Mile Island nuclear wastes from Pennsylvania to Idaho by dedicated trains has been a matter of policy. It needs to be a matter of law. This bill directs the Secretary of Transportation to require that single-purpose trains be used for all rail shipments of high-level radioactive wastes or spent nuclear fuel.

2. Establishment of Department of Transportation (DOT) Standards for Selecting the Safest Modes and Routes for Transporting High-Level Radioactive Materials and Spent Nuclear Fuel.

Decisions on modes and routes for nuclear shipments now are made at the whim of the shipper, who often is more concerned about cost-cutting than safety. This provision would require DOT to work with the states to set, and shippers to use, clear and objective guidelines that take into consideration factors such as population densities, emergency response capabilities, and potential environmental impacts along alternative highway or railroad routes.

3. Mandatory Full-Scale Testing and Nuclear Regulatory Commission (NRC) Certification of Nuclear Shipping Packages.

At this time, NRC, the independent regulatory agency responsible for the overall safety of nuclear activities, sets strict standards for certification of new nuclear shipping packages. The Department of Energy (DOE), the agency responsible for transporting spent nuclear fuel from commercial facilities to DOE-operated research or disposal sites, is allowed to self-certify nuclear packages for its own use, as long as its standards are equal to those used by the NRC.

Both NRC and DOE use a combination of a one-fourth scale-model testing and engineering analysis to judge whether new nuclear shipping packages meet safety standards. In fact, one-fourth scale models have worked during field trials, only to have the full-scale versions fail under similar conditions. This provision makes full-scale testing mandatory.

Also, this provision would require that the NRC, an independent regulatory agency, certify all nuclear packages used in commerce, rather than allowing the DOE to self-certify its own packages. The fox shouldn't be guarding the hen house!

4. Authorization of 20 DOT Inspectors Dedicated to Safe Transportation of Radioactive Materials.

When we introduced this legislation last April, DOT's only nuclear transportation safety inspector had just left the department. This was especially disturbing in view of the fact that between 100 and 300

shipments of high-level radioactive waste and spent nuclear fuel are transported annually. Thousands of low-level radioactive shipments, many of them for medical or research purposes, also are being shipped each year.

Now, we don't know how many of these shipments are inspected. Transportation safety generalists at the federal level inspect some of them; state and local inspectors inspect others. This provision, which is similar to legislation first introduced by Senator Kassebaum during the 100th Congress, would ensure that all high-level radioactive shipments are inspected at point of origin, and that lower-level radioactive shipments are checked regularly.

5. Mandatory Permitting of Motor Carriers to Transport Certain Hazardous Materials.

DOT does not have a complete list of motor carriers who transport various hazardous materials, nor can it tell which ones operate safely. This provision would require motor carriers to obtain a federal permit to transport certain highly dangerous cargoes: Class A or B explosives, materials that are extremely toxic by inhalation, or certain radioactive materials. Carriers who fail to comply with the law would lose their permits. Shippers could use permitted carriers only.

6. Retention of Placarding on Packages or Containers Until all Hazardous Materials have been Removed.

On November 29, 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck trailer parked at a highway construction site. Because the trailer's hazardous materials warning placards had been removed, the firemen were unaware that it contained over 25,000 pounds of explosives. This provision would require packages, containers or vehicles containing hazardous materials to remain placarded until their dangerous contents are gone.

7. Deletion of "Knowingly" from the Civil Penalties Section of the Hazardous Materials Transportation Act.

The Hazardous Materials Transportation Act makes liable for a civil penalty anyone who "knowingly commits" a violation of the Act or its regulations. The DOT always has interpreted the term "knowingly" to mean

that a person knew, or in the exercise of reasonable care should have known, of the facts constituting a violation.

However, a U.S. district court recently ruled that DOT could not levy penalties unless it could prove that the actions of a person or company involved "willful negligence," or a "reckless disregard for the probable consequences." If this standard prevails, DOT will be powerless to protect the public from careless transporters of hazardous goods, unless their violations are especially egregious.

It is obvious that the court's decision goes too far, seriously undermining DOT's existing enforcement efforts. This provision would allow DOT to continue to enforce the law.

8. Addition of Civil or Criminal Penalties for Violations of DOT "Compliance Orders."

DOT is authorized to issue compliance orders, but only the District Courts of the United States, upon petition by the U.S. Attorney General, can enforce such orders. This provision would authorize DOT to enforce compliance orders.

9. Prohibition against Tampering with Hazardous Materials Shipments.

During 1988, an improperly placarded car was hooked up to one of the Three Mile Island spent nuclear fuel trains as it was about to enter Missouri. During the investigation of this incident, we learned that no provision in the existing Hazardous Materials Transportation Act explicitly prohibits tampering with such shipments.

This provision provides for civil penalties for any person, without lawful authorization, who tampers with markings, placards or documents required on a hazardous materials shipment, or with any package, container, motor vehicle, railroad car, aircraft, or vessel used for transporting hazardous materials.

10. Prohibition Against Motor Carriers with Unsatisfactory Safety Ratings from Carrying Hazardous Materials.

DOT audits motor carriers and assigns them ratings of "satisfactory," "conditional," or "unsatisfactory."

A motor carrier must have a number of serious safety violations before it is given an "unsatisfactory" rating; even then, the carrier is free to operate. As a result, some 812 hazardous materials carriers now operating have "unsatisfactory" safety ratings. This provision would ban any motor carrier with an "unsatisfactory" rating from transporting hazardous cargoes on our nation's highways.

Enactment of S. 728 would make hazardous materials transportation safer, not only for Missouri and Kansas, but for the nation. I am pleased that the comprehensive Hazardous Materials Transportation Act reauthorization bill to be introduced by Senator Exon in the near future will contain the provisions of S. 728. It is time for Congress to act on this important legislation.

STATEMENT OF SENATOR LARRY PRESSLER

Thank you, Mr. Chairman. This is a very serious issue we are addressing today, and I would like to thank you for holding this hearing.

All of us are affected by the transportation of hazardous materials. One needs only to see a newscast on a highway or rail accident involving hazardous materials to realize the importance of strict safety regulation in this industry. It is evident that we need to increase our testing and inspection efforts to prevent any further hazardous materials disasters.

We have a number of pieces of legislation before us to solve these safe transportation problems. I look forward to hearing all of the witnesses and examining each of the legislative proposals in our discussions today.

Senator EXON. I am very pleased now to recognize two Members of the House of Representatives and our own Senator Howard Metzenbaum of Ohio.

Welcome, Senator Metzenbaum. We would be glad to recognize you at this time.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you very much, Mr. Chairman. I always appreciate the opportunity and privilege of appearing before this committee and before you and Senator Kasten this morning. Each time I come here I become a little bit envious because I think you have the most beautiful hearing room of any of the committees in the Senate. That just goes to show the judgment of the Chairman of the committee in being able to make such arrangements.

Let me say that I am the author of HAZMAT legislation currently pending in your committee.

Senator EXON. Senator, could you pull your microphone just a little closer?

Senator METZENBAUM. Sure will.

Senator EXON. I can hear you, but I am not sure the people in the back of the room can.

Senator METZENBAUM. My bill addresses a number of serious shortcomings in our efforts to keep the rails and highways safe from toxic spills. Every American is at risk from the deadly chemicals that are carried daily by truck, train and airplane through every city and state in this country.

Last year the General Accounting Office issued a report criticizing the Federal Railroad Administration for mismanaging its hazardous materials inspection program. Frankly, I found that report shocking. The GAO found that the FRA is seriously neglecting its responsibility to protect the public from rail accidents and toxic spills. Let us take a look at the facts.

Over 1.1 million carloads of poisons, chemicals, pesticides and other hazardous materials move over the rails each year. The 85 railroads, 15,000 shippers and 100,000 tank cars handling these materials are supposed to be inspected each year. Who is responsible for making these safety inspections? A total of 34 full-time Federal inspectors nationwide. That is it. 34 inspectors for the entire country. Needless to say, it is not nearly enough to do the job.

We have a Bhopal on wheels just waiting to happen. Senator Kasten made the comparison before, and it is an appropriate kind of comparison to make.

Unfortunately, my own State of Ohio learned the hard way. In 1986, 14 cars of a CSX train derailed in Miamisburg, igniting a load of white phosphorous that burned for four days. 50,000 people were actually evacuated from their homes. Two years later two CSX tank cars carrying highly flammable butane derailed in downtown Akron, Ohio. 2,000 people were evacuated. I visited the area. It was hard to believe, to see a whole area where all of the people had been moved out. It was truly a disaster.

Unfortunately, these accidents are happening everywhere. Ohio is not unique. Last year a derailed tanker car in Freeland, Michigan burned for 5 days. 2,000 people were forced out of their homes.

The most incredible thing is that the states are powerless to do anything about it. That is absolutely absurd. Something is wrong. Even though states and local communities have to be the first responders, putting their firefighters and emergency teams on the line, even though it is local people who are forced out of their homes, states are prohibited from having anything to do with hazardous materials safety enforcement on railroads.

Because of a bizarre anomaly in the law, the courts have held that states are preempted from any involvement in enforcing hazardous materials rules, even rules identical to Federal rules as they apply to railroads. I did not make that up. It is not fiction. It is not just a legal theory.

Just last April the Sixth Circuit Court of Appeals sustained a lower court order blocking inspectors employed by the State of Ohio from enforcing Federal hazardous materials rules which govern railroads in my state. Seven states—California, Washington, Oregon, Texas, Nevada, Tennessee and Missouri—joined Ohio in filing amicus briefs in that case.

I believe states that are ready and willing to enforce Federal HAZMAT safety standards should have the authority to do so. That is what the GAO recommended. That is what experts in the Congressional Research Service have recommended. Even the Federal Railroad Administration endorses giving the states some authority to perform hazardous materials inspection. There is really no reason not to do so.

The legislation I introduced, now pending in your committee, would permit states to do just that, inspect and enforce Federal rules. The bill has other provisions as well, but I do not want to take up a lot of time discussing them today.

As you probably know, Mr. Chairman, we have been attempting to work out a compromise on the railroad HAZMAT State inspection issue. We hope to develop an amendment that railroads can live with. Barring that, I would hope that we can address the issue in the next hazardous materials bill reported by the committee.

This is not a small problem. This is not just another problem. This is a tremendous problem, one that has already caused an untold amount of damage and is waiting to be of even greater seriousness and consequence.

I hope that I can count on this Committee acting expeditiously, and I hope I can look forward to working with the Committee. We want a bill that is fair to the railroad industry, but we are particularly concerned about the situation that now exists without anything being done in this whole area of hazardous materials travelling across the states.

Senator EXON. Senator Metzenbaum, thank you very much.

I have no questions for the record. We may have some detailed questions that we would like to have your expert input on as we move forward to consider legislation that you and others have introduced.

I thank you for being a key player in this matter, which I certainly share your sentiments on with regard to the severity of the problem. I have no questions.

Do you have any questions of Senator Metzenbaum?

Senator KASTEN. No, I was just wondering if we will hear Senator Specter.

Senator EXON. Yes, the Chairman will recognize him. I was just trying to save everyone's time. You are welcome to stay as long as you wish, but since there are no questions by the panel, you are free to go any time you wish, Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman.

Senator EXON. I am delighted to see my friend and colleague from Pennsylvania here. I did not have your name on the list, unfortunately, Senator Specter. But I know that you have been a key player in this whole area, and we are delighted to have you come before the subcommittee this morning. And I am very pleased to recognize you at this time.

STATEMENT OF HON. ARLEN SPECTER, U.S SENATOR FROM PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. I appreciate this opportunity to testify before this important subcommittee on this important subject.

At the outset, Mr. Chairman, I would ask that a full text of my statement appear in the record, so that I may abbreviate it and save everyone's time this morning.

Senator EXON. Without objection, that is so ordered.

Senator SPECTER. Mr. Chairman, I will be discussing legislation which I introduced, S. 581 in the current Congress, which is a follow-up and an improvement on S. 2844 in the 100th Congress. I have introduced this bill because of what I conceived to be an enormous national problem which has special impact on my state, Pennsylvania.

The General Accounting Office noted that Pennsylvania had 50 percent of the total evacuations nationwide and has had an enormous number of train accidents, in excess of 300 in 1987, with a total of 35 deaths and $6.6 million dollars in damage. One line of track near Confluence, Pennsylvania, had 11 accidents in one stretch of track from 1986 to 1990.

I bring to bear on this subject a comparison on the little town where I group up, Russell, KS, which had two trains, one going from Kansas City to Denver at 3:00 a.m., and one going from Denver to Kansas City at 3:30 a.m. We never had a derailment in Russell because we very seldom had trains. Contrasted with the number of trains which go through Pennsylvania, perhaps, because the Pennsylvania Railroad was the largest original carrier.

During the past several years there have been some 11 serious accidents in Western Pennsylvania in one stretch of track alone. The examples of the injury, pain, suffering, and inconvenience is just extraordinary. In a suburb of Pittsburgh, Bloomfield, PA, some 16,000 people were evacuated at one stage, and a railroad night watchman was killed in a derailment. It is an enormously serious problem. It was characterized accurately by Senator Metzenbaum

on the issue of the limited number of inspectors. I had 35, instead of 34, in my statistical report. But there is an enormous need to have inspections. And inspections can be accomplished.

My bill provides for inspections to be conducted by the rail lines, with certified inspectors—inspectors certified by the Federal Government. When Senator Metzenbaum has urged that states have the authority to regulate this issue, I do not necessarily disagree with that idea, but it is not going to happen under the constitutional provisions governing interstate commerce. It is a federal matter.

When these matters have been litigated, the states have been excluded from authority because of being a burden on interstate commerce. On one of these derailments in one Pennsylvania locality, I was asked by the township to enact regulations which would protect the township. Now that would be great for the township, but when a train travels in interstate commerce, it is a federal responsibility. And interstate commerce, I do not have to amplify about that before this Committee in this room. Tomes have been written about it.

Inspections of train equipment is something the Federal Government needs to address. Knowing the reality of the limitation of federal funds, we are not about to put on enough inspectors to do the job. We are faced with such budget limitations each year. I wish I could make that recommendation to the Committee, but it is meaningless to do so. But there is no reason why the railroad should not have the obligation to make inspections at the point of origin.

When I was a younger lawyer, practicing with the Philadelphia law firm of Barnes Dechert Price Meyers & Rhoads, representing the Pennsylvania Railroad, one of my assignments was to research all of the cases involving rail car defects. I prepared a very extensive memorandum and read dozens and dozens of cases. And it impressed on me at that time of the value of a reasonably thorough inspection. Mr. Chairman, inspection can and do detect problems.

But trains are not inspected today. My bill has a very direct requirement for such inspections at point of origin. It is the most fundamental requirement conceivable. And there is no earthly reason why rail carriers should not be required to have inspectors who inspect their trains. And they ought to be certified by the Federal Government.

My bill provides for training standards. It is not only the cars, but also tracks, and especially bridges, which in enormous disrepair in this country. My bill provides for expanded penalties, civil fines—a minimum civil fine of $500, because today these matters are being compromised out.

I know this Committee is well aware of the enormous problem that this issue poses. I would just urge on this occasion on the reauthorization of the pending legislation, that very strong, very tough action be taken.

One other provision is worth a moment's notice, although I have not summarized all, and that is the requirement that each train have on its train line two copies for emergency procedures on what the train is carrying. On some of these accidents in Pennsylvania, the local officials do not know what is on the train. They do not know how to respond.

My bill provides for a requirement that there be this information available so that there can be a response and an emergency hot line to get assistance.

Unfortunately, this is the sort of an issue which only pops up from time to time when there is a major catastrophe, but I know how thoughtful you are, Mr. Chairman, and how thoughtful the ranking member is. And I would urge you both, that this is the time to take some very fundamental steps in providing inspections, which can cut down on this calamity for America.

Thank you very much.

[The statement follows:]

THE HAZARDOUS MATERIALS RAIL TRANSPORTATION ACT

A STATEMENT OF SENATOR ARLEN SPECTER

BEFORE THE SENATE SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. Chairman, I want to thank the Subcommittee for this opportunity to discuss my concerns and my bill regarding the transportation of hazardous materials by rail. On March 14, 1989, I introduced S. 581, the Hazardous Materials Rail Transportation Safety Act of 1989 to improve rail safety and the transportation of hazardous materials.

Transportation of hazardous materials is a dangerous but essential activity. According to the Department of Transportation, approximately 4 billion tons of regulated hazardous materials are transported each year throughout the United States. The Association of American Railroads reports that approximately 925,000 full carloads of hazardous materials were transported in 1987 alone. While transportation by rail is considered the safest method of moving these enormous amounts of hazardous materials, a number of problems remain to be remedied. This bill would make rail transportation safer and would provide better protection for surrounding communities and their residents.

My bill includes a number of important measures to improve rail transportation of hazardous materials. Specifically, S. 581 addresses the need for uniform procedures in the railroad industry, while providing more resources to emergency responses after an accident occurs.

This bill is in response to the disturbing number of train derailments nationwide and in Pennsylvania, and numerous site

visits and personal meetings with railroad officials, labor leaders and concerned citizens regarding rail accidents.

In 1987 alone, there were 307 train accidents in Pennsylvania, resulting in the deaths of 35 persons and $6.6 million in damaged railroad property as reported to the FRA by the involved rail carriers. These accidents in 1987 resulted in the evacuation of approximately 12,360 residents from their homes following the release of hazardous materials. The General Accounting Office has noted that in 1987 the number of evacuations in the Commonwealth was more than 50 percent of the total evacuations nationwide.

During the past several years there have been at least 11 serious accidents in Western Pennsylvania on one stretch of track alone. Those included accidents on May 17, 1986, June 30, 1986, October 31, 1986, and January 15, 1987. On April 11, 1987, two freight trains collided in Bloomfield, Pennsylvania, near Pittsburgh, causing several derailed cars to ignite and forcing the evacuation of some 16,000 persons. A derailed car leaked phosphorus oxychloride, a gasoline and hydraulic fuel additive which can be lethal in large doses. The accident also involved a car containing toluene disocyanate, a flammable substance which can irritate lungs, skin and eyes. The catastrophe is considered Pennsylvania's worst train accident in a decade and the largest chemical-caused evacuation in Pittsburgh's history.

Less than one month later, on May 6, 1987, a serious rail accident occurred in Confluence, Pennsylvania. Twenty-seven train cars derailed and crashed into an adjacent tower, killing the tower operator. Approximately 1,000 residents were evacuated

from their homes for over 12 hours because 21 of the derailed cars contained hazardous materials. Hydrochloric acid and a small amount of caustic soda were released.

In response to these accidents and the concerns expressed by area residents, I toured the tracks on July 27, 1987, in Confluence and personally met with local officials, union leaders, CSX Transportation, Inc. representatives, Federal Railroad Administration representatives, and local residents. Two days following my site inspection, yet another accident occurred on the same track, 27 miles away in Connellsville, Pennsylvania. One of the 17 cars involved was carrying residues of liquid chlorine and liquid petroleum.

I express special concern about the condition of the tracks and the continued derailments in light of Amtrak's use of these tracks for its Capital Limited line. This passenger train travels between Chicago and Washington, D.C., carrying an average of 543 passengers per day in each direction. Amtrak advises that approximately 60 trains transport 16,295 passengers during each month. Only six days after I raised these concerns, Amtrak's eastbound Capital Limited Number 30 derailed approximately two and one half miles east of the Pittsburgh station. According to Amtrak, two of the three locomotives and all 14 passenger cars left the track. Amazingly, the cars somehow remained upright and fortunately there were no serious injuries among the 234 passengers on board.

Elsewhere in Pennsylvania, accidents have occurred which included hazardous materials with potential serious consequences. On February 9, 1987, in Morrisville, Pennsylvania, an attempt was

made to couple two cars containing hazardous white phosphorus on a track occupied by other tank cars. Reports indicated that the cars' couplers missed connecting and punctured one of the hazardous materials tank cars. The punctured car consequently released white phosphorus which ignited, destroying three tank cars, damaging adjacent equipment and track, and requiring extensive cleanup of contaminated soil. Approximately 2,500 people were evacuated for over five hours because of the accident.

Most recently, Western Pennsylvania has suffered two more rail related accidents that both were associated with hazardous materials and resulted in the evacuation of nearby residents. On November 19, 1989, six cars of a 91 car mixed consist train derailed near Adrian, Pennsylvania, one of which, a tank car containing flammable methyl methacrylate was punctured necessitating an evacuation of some 30 nearby residents. Again, on April 22, 1990, 29 of a 97 car train traveling near Craigsville, Pennsylvania, derailed causing two tank cars that were loaded with crude oil to catch fire, prompting the evacuation of some 200 local residents. Subsequently, one of the derailed tank cars released approximately 16,000 gallons of product into Buffalo Creek, which flows into the Allegheny River a major source of water to Western Pennsylvania.

In light of the growing concern in the Commonwealth of Pennsylvania regarding the many rail accidents in Western Pennsylvania during 1987, I joined Senator Heinz and Representative Gaydos on August 24, 1987, in requesting the General Accounting Office (GAO) to assess railroad safety in

Pennsylvania and throughout the nation, and to review FRA's inspection and enforcement policies. GAO completed its assessment raising a number of issues and concerns, many of which I have addressed in S. 581.

Mr. Chairman, while my comments today, and my own experiences, focus on problems in Pennsylvania, rail safety is not a localized problem. I believe the track and equipment problems in Western Pennsylvania are representative of the situation nationwide.

The Congressional Research Service (CRS) reports that in 1986 alone, approximately 842 train incidents nationwide involving hazardous materials were reported to the Department of Transportation. The General Accounting Office (GAO) reports that in 1986, 39,701 people were evacuated from their homes nationwide as a result of accidents involving hazardous materials. The GAO Further advises that in 1987 alone, there were 8,816 railroad accidents and incidents nationwide resulting in 1,107 deaths, 6,585 injuries, and over $180 million in damages to railroad property.

Mr. Chairman, transporting hazardous materials by rail obviously involves risk. While it is not realistic to expect an accident-free industry, nevertheless we have a responsibility to reduce obvious hazards and make the system as safe as possible. The bill I have introduced will implement much needed improvements to guarantee rail safety for the public, by ensuring frequent and thorough inspections. By enacting these provisions, positive steps will be taken to ensure that accidents occur far less frequently, and that effective emergency response procedures

are in place when an accident does occur.

My bill would establish emergency response procedures for rail carriers after accidents or in emergency situations involving the transportation and storage of hazardous materials. Specifically, this provision would require that two or more copies of written information be on board trains transporting hazardous materials, with one copy available for immediate distribution to local emergency personnel.

Also, the legislation would mandate an increase in the number of inspections on trains, tracks, bridges, and major signal systems which regularly are used for the transportation of hazardous waste. In carrying out these inspections, the Federal Railroad Administration would ensure that each train transporting hazardous materials be inspected, as required, by an inspector employed by the carrier, certified by the railroad using criteria designed by the Federal Railroad Administration. To address the problems in track and bridge conditions, the bill would require more frequent FRA inspections of tracks, bridges and signal systems.

Another integral part of the legislation involves the use of placards, which designate the type of hazardous material that is being transported. Following an accident, it is most important to properly identify the substance which may have leaded and caused subsequent adverse public health effects. Therefore, the bill states that any person who wilfully alters, destroys or removes any placard involved in the transportation of hazardous waste, shall be subject to a fine of not more than $10,000 or imprisonment for not more than 3 years.

The GAO report requested by Senator Heinz, Representative Gaydos, and myself noted the lack of enforcement of FRA rules and regulations and the lack of use of civil penalties. Therefore, the bill I introduce today would create a uniform civil penalty for violations of the federal safety laws with a maximum penalty of $10,000 per violation, a minimum of a $500 penalty, and a penalty for gross negligence of $20,000.

This bill also would mandate training programs for rail workers to ensure that employees on trains transporting hazardous materials are adequately prepared to deal with an accident or emergency situation. The legislation implements a mandatory minimum training program for all rail workers.

Mr. Chairman, local fire and police department personnel are usually the first to respond to a hazardous material transportation accident, therefore, training of these individuals is and should be a high priority. The Congress' Office of Technology Assessment estimates that of the two million emergency response personnel, 75 percent are unprepared to deal with accidents involving hazardous materials. The National Fire Academy reports that of 1.2 million firefighters, approximately 85 percent are volunteers and do not have the sufficient financial resources to take advantage of available training programs.

Mr. Chairman, S. 581 offers adequate personnel for these additional responsibilities, the bill would authorize the Federal Railroad Administration to double its number of hazardous materials track inspectors to assist in carrying out the track and train inspections.

This bill offers reasonable and practical solutions to remedy rail safety and inspection problems nationwide. Accordingly, I urge the Committee to join me in this comprehensive effort to create a safer rail system for the transportation of hazardous materials, firmly penalize violators, and ensure the structural integrity of our tracks and bridges.

Mr. Chairman, thank you for this opportunity to testify today regarding these important matters.

Senator EXON. Senator Specter, thank you very much. And I am certainly familiar with what you have done in this area. I tend to agree basically with the thrust of your testimony, that I believe this is indeed a federal issue under the interstate commerce laws. And that is why we on the Committee have been pushing and pushing and pushing, trying to get some kind of a consensus to make sure we are working in the right direction.

But I agree that the responsibility lies here, and we are attempting to discharge that, and I appreciate very much the key role that you have been playing therein.

Just to comment about your hometown of Russell, KS, you should go back from time to time, there are more trains going through Russell, KS, now, as I understand it. They are going into quite a metropolitan city. In fact, they are bidding for the National League franchise in either Philadelphia or Pittsburgh to be transferred to Russell, KS.

And as soon as we are successful in getting their mass transit problems worked out, why, I suspect very much that they will have a national league franchise. In any event, thank you for your input and advice. I have no questions. We may have some for the record.

Senator Kasten.

Senator KASTEN. I thought maybe the Senator might want to reply to your baseball statement.

Senator SPECTER. Well, I do, Mr. Chairman, very briefly, since Senator Kasten paused.

I go back to Russell, KS, with some frequency. My brother lives there. And I do not stay up until 3:00 a.m.; it is very lonely on the streets of Russell at 3:00 a.m., so I am not sure, but I do not believe any train goes through Russell any more.

There is an enormous water tower in Russell. And whenever I drive by I see this enormous sign, "Home of Senator Bob Dole," and I have been tempted to take my blue Flair pen out and go deface the property, and write on there "Arlen Specter grew up here, too."

Senator EXON. Thank you very much.

Senator Kasten.

Senator KASTEN. Thank you. First of all, I just want to make one comment. Obviously, Senator Specter has been a leader in this area, both in the previous Congress and now here, and we just appreciate your help and your support. And we hope that somehow in

the reauthorization bill we can take some of your ideas. Because obviously they are well thought out, and I just want to thank and congratulate you for your help.

I just want to ask a question. In Senator Metzenbaum's bill there is a central reporting system and data center, in which he envisions some kind of a federal computer system that would be able to track all these different shipments. My understanding is that is not in your bill. Your bill is concentrating primarily on the inspection aspects of this. Is that correct?

Senator SPECTER. Yes, it does, Senator Kasten. I think that Senator Metzenbaum has a good point. My concern is more immediately directed at what happens on the cars. If you know where they are, that might provide some assistance. But I think you just have to take a look at it, just like all of us take a look at anything we do every day to determine the national value of a proposal.

As I say, when I researched these cases years ago, it was amazing to find how much you can see by just taking a look.

Senator KASTEN. Thank you very much.

Senator SPECTER. Thank you, very much Senator Kasten.

Senator KASTEN. And thank you for your leadership in this area.

Senator EXON. Thank you, Senator. We appreciate your coming over very much, and your testimony.

The next witness, then, will be the Hon. Douglas Applegate. Congressman, we would very much appreciate your coming forward at this time. And while you are coming forward, I would announce that Congressman Boehlert has been detained on the House side and may not be able to make it. And without objection, his full prepared testimony will be entered into the record at an appropriate point.

Congressman, thank you for coming over. We know that you are very much concerned and interested in these things. And we appreciate your leadership on the other side of the Hill. I am pleased to recognize you at this time for any statement that you have.

STATEMENT OF HON. DOUGLAS APPLEGATE, U.S. REPRESENTATIVE FROM OHIO

Mr. APPLEGATE. Thank you very much, Mr. Chairman. I appreciate this opportunity.

I was very much interested in the dialogue going on here with Senator Specter and many different aspects of it. It is true there are not many trains that are running through many of the towns any more. In Steubenville, OH, which used to be a great railroad center, there are very few going through, and of course there are not any passenger trains going through and relatively few freight trains. We sort of miss that.

But I also agree with and want to comment and commend Senator Specter and my colleague from Ohio, Howard Metzenbaum, for their input and for their bills, and particularly with Howard Metzenbaum, because his bill closely parallels the bill which I have put in, which is H.R. 2584 in the House. I think it is the most pragmatic approach.

I heard Senator Specter talking about how he did not have the central data reporting system set up, but that he thought that perhaps inspection was a better direction to go. I believe that better inspection is necessary, if you know where the trains are at any given time and if you know what is in them, and of course that is one of the problems.

But let me just say this. I think Senator Metzenbaum had very succinctly pointed out some of the very important facts in his testimony. Now, the fact is that there are 500,000—I repeat, 500,000—shipments of hazardous and/or toxic waste that travel the highways and byways and waterways and airways in this country every single day. Now, that is a lot, and it is estimated that maybe as much as one-quarter of 1 percent of those are in accidents, either a major or a minor accident.

Well, if you take one-quarter of 1 percent you are talking about 1,250, and if you are talking about 1,250 over the country, and even if you took maybe three or four of those that were major spills, that means that there is a problem somewhere in the United States, and there are a lot of uncertainties, a lot of dangers that fire-fighters, the police and the general public are faced with, and they really do not know anything about how to go about handling it.

For the most part, the fire-fighters in this country are not as prepared as they ought to be, because they do not have the money, necessarily, to train in HAZMAT. They have been doing a great job in recent years. But one of the main things is, if they do not know what is in the truck, if they do not know what is in the tank car, if they do not know what is on the plane that, maybe, has crashed, and if there is a spill or a fire they do not know what is in there, and it is just a wild guess.

They cannot run in there with hoses and pour water on it, because water mixed with certain kinds of chemicals could create a gaseous situation which could bring on another Bhopal or some other kind of very serious type of thing.

I think if the people of this country—you know, they argue about a lot of things that go through their communities, but if they knew what was flowing through their communities each and every day, in a lot of these small communities, they would be absolutely appalled and outraged at knowing that some of these very dangerous chemicals, hazardous materials and toxic wastes were going through.

Sometimes you might see a milk truck going through. It might just say "Milk." But there is not milk in it. You have got something else in it. Now, what we are trying to do is trying to make some corrections so that every shipment of hazardous and toxic waste is known by a central computerized system. It will know exactly where it is at any given moment, so that when it is found, if there is a spill, then the fire-fighters or the police, the first line of defense who are on there, know exactly what to do and how to cope with it.

There are a lot of examples, and I am not going into a lot of them. I think Senator Metzenbaum did that. But in Miamisburg in Ohio, there was a tank car spill, a couple of cars, and there was an excessive amount of leakage. Miamisburg is down around near

Springfield, OH, in the southwestern part of Ohio, and it did leak. But they went on for ten hours without knowing what it was they were dealing with—ten hours—and they did not have accessibility to the manifest because the person who had the manifest did not want to turn it over.

Now, not knowing what is in there, not knowing whether to throw water on it, whatever it might be, could be a very dangerous situation. As it was, it turned out—it finally did rain, as I understand, and nothing did happen, but it could have. But they had to evacuate some 30,000 people out of that area, just because they did not know. They did not have the manifest to know what was in there, or what to do about it. That is just one of the examples.

So there is a tremendous need, and Senator Metzenbaum's bill, as I say, parallels mine. However, it goes into different areas. But the most important thing that he comes up with and that we both agree on is a central reporting system. Senator Kasten was asking Senator Specter about whether or not that was in his bill, and it is not.

But the central reporting system would just say that whenever a shipment leaves a generator, the information will be pumped into a central reporting system. Hopefully, one day, every fireman, every fire-fighter, every policeman will have accessibility to that information.

There will be a computerized system, ultimately, where on a truck they will be able to see that. They will be able to look at a number on that truck or that tank car, or whatever it is, and punch it in, and have that information as to what is in it and how to cope with it within 10 or 15 seconds, not 10 hours. Then they would be able to offer protection to the people in the community and themselves.

What else this will do, it will set up of course a computerized network in order to accomplish this. It will set up a training program and a program to equip the fire-fighters in their ability to be able to fight this, and there would be an on-going study to locate the danger spots and to find out what hazardous materials are flowing through the various communities.

Now, you might say—and of course, you would say and ask, how is this going to be accomplished? Well, it would be accomplished through the authority that will be given to the Secretary of Transportation. He will, through a bid basis, contract this out to the private sector. Senator Metzenbaum has that option, but he also said that it would allow it to be facilitated as a government operation.

Then I have heard people say, well, it is going to be a tremendous cost. Well, yes, it is going to be a cost. There is no question about that. But I think the real cost is in the potential of life and property damage, and it seems to me that we cannot afford not to have the very best to protect our communities and those on the first line of defense.

How is it going to be paid? That is always a realm of controversy, but it is not going to be paid, in my bill, with tax dollars. It will be paid by the generator of the hazardous material or the toxic waste or chemicals or whatever it might be. There will be a per-manifest fee. That will be established by the Secretary of Transportation through the bid process.

That money will go into setting up the whole computerized network. It will go into training the fire-fighters. It will go into equipping the fire-fighters. It will go into conducting the studies. So you can see that it is going to be pretty well self-sustaining.

This is supported by the International Fire-Fighters Association as well as the Teamsters, the guys who drive the trucks. It is supported by the International Union of Police Associations. It is supported by the Fraternal Order of Police, and it is also supported by the AFL-CIO.

I think it is a good direction to take, and I just appreciate, again, your giving us the opportunity to be able to hear this bill, to look at it, to consider it, and I again want to commend Senator Metzenbaum for introducing primarily the same bill that I have and Senator Specter for his.

[The statement follows:]

TESTIMONY OF

CONGRESSMAN APPLEGATE (D-OH)

MR. CHAIRMAN:

LET ME TAKE THIS OPPORTUNITY TO COMMEND YOU FOR SCHEDULING THIS IMPORTANT HEARING AND I APPRECIATE THE CHANCE TO APPEAR BEFORE THE SUBCOMMITTEE TO DISCUSS H.R. 2584, A BILL TO AMEND THE 1974 HAZARDOUS MATERIALS TRANSPORTATION ACT TO FULLY AND PROPERLY IMPLEMENT THIS LANDMARK LEGISLATION.

IN 1974, CONGRESS SAW FIT TO MANDATE THAT THE SECRETARY OF TRANSPORTATION ESTABLISH AND MAINTAIN A CENTRAL, REPORTING DATA CENTER ON ALL SHIPMENTS OF HAZARDOUS MATERIALS TO PROVIDE TECHNICAL INFORMATION TO EMERGENCY RESPONSE PERSONNEL. REGRETTABLY, CONGRESS WAS DUPPED BY THE ADMINISTRATION IN TO ACCEPTING CHEMTREC, AN IN-HOUSE, INFORMATIONAL CENTER, OPERATED BY THE CHEMICAL MANUFACTURERS ASSOCIATION AS MEETING THE MANDATE OF THE 1974 LAW. HOWEVER, THIS SYSTEM IS OF NO USE IF THE EMERGENCY RESPONDERS DO NOT KNOW WHAT MATERIALS ARE INVOLVED OR IF THERE IS A DISCREPANCY IN THE MANIFEST. CHEMTREC IS NOT CENTRALIZED, DOES NOT OFFER REAL-TIME INFORMATION AND THEY DO NOT REPORT TO ANY FEDERAL AGENCY. BECAUSE OF THE OBVIOUS FLAWS IN THIS SYSTEM, THE IAFF HAS CALLED ON ITS MEMBERS TO STOP USING CHEMTREC.

I, ALONG WITH CONGRESSMAN BOEHLERT HAVE INTRODUCED, H.R. 2584, IN AN ATTEMPT TO ADDRESS THE SERIOUS PRODUCT IDENTIFICATION PROBLEMS FACED BY FIRST-TIME RESPONDERS. OTA HAS REPORTED THAT BETWEEN 25%-50% OF THE PLACARDS, THE MAJOR SOURCE OF IDENTIFYING SHIPMENTS, WERE INCORRECT. IN ADDITION, THE EMERGENCY RESPONSE GUIDEBOOK THAT FOLLOWS THE PLACARDS SYSTEM, IS PRINTED EVERY THREE

YEARS. MEANING THAT THE BOOK IS OUT-DATED EVEN BEFORE IT IS PRINTED DUE TO THE CREATION OF HUNDREDS OF NEW CHEMICALS PRODUCED EVERY YEAR.

H.R. 2584 WOULD MANDATE THAT THE SECRETARY OF TRANSPORTATION CONTRACT WITH A PRIVATE ENTITY TO ESTABLISH AND MAINTAIN A CENTRALIZED, COMPUTERIZED CENTRAL REPORTING DATA BASE ON ALL SHIPMENTS OF HAZARDOUS MATERIALS AND WASTE AT NO COST TO THE FEDERAL GOVERNMENT. THE COST OF THIS SYSTEM WOULD BE PAID BY THE MANUFACTURERS OR GENERATORS OF THESE TOXIC COMPONENTS THROUGH A PER MANIFEST CHARGE FOR EACH SHIPMENT. AGAIN, IT WOULD BE THE GENERATORS, NOT THE SHIPPERS WHO PAY THE MANIFEST CHARGE. THIS WILL ADHERE TO THE "POLLUTER PAYS" PRINCIPLE.

THE IMPLEMENTATION OF THIS KIND OF SYSTEM WOULD NOT ONLY ADD TO A SOUND TRANSPORTATION SYSTEM, BUT WOULD INCREASE PUBLIC SAFETY AND PROTECT LIFE AND PROPERTY. BECAUSE OF THE TREMENDOUS BENEFITS OFFERED, THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, THE FRATERNAL ORDER OF POLICE, THE TEAMSTERS, AND THE INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO, HAVE STRONGLY ENDORSED THIS LEGISLATION. FOR TOO LONG, EMERGENCY RESPONDERS HAVE BEEN PLACED AT RISK DUE TO THE INABILITY TO DETECT THE CONTENTS OF A SHIPMENT AND PLACE THEIR LIFE ON THE LINE EVERY TIME THEY MUST APPROACH A VEHICLE. THERE IS SO MUCH THAT WE DO NOT KNOW DUE TO LACK OF

ENFORCEMENT, UNDER-REPORTING AND DELAYED REACTION TO EXPOSURE; H.R. 2584 GIVES US THE CHANCE TO ONCE AGAIN GAIN CONTROL OVER HAZARDOUS MATERIALS TRANSPORTATION.

THERE HAS BEEN A GREAT DEAL OF CRITICISM LODGED AGAINST THIS BILL. HOWEVER, LET ME POINT OUT THAT THE CRITICISM IS COMING FROM THE INDUSTRY AND THE TRUCKING GROUPS THAT FEAR THE IDEA THAT THEY MIGHT HAVE TO RENDER CONTROL OVER PUBLIC SAFETY BACK TO THE FEDERAL GOVERNMENT. THE THOUGHT OF NO LONGER HAVING A SELF-REGULATED SYSTEM TERRIFIES THE INDUSTRY AND RIGHT FULLY SO. HOW CAN A BILL THAT HAS BEEN ENDORSED BY EMERGENCY RESPONDERS, THOSE ON THE FRONT LINES, AND HAS 202 HOUSE CO-SPONSORS BE THE MENACE TO SOCIETY THAT THE INDUSTRY CLAIMS IT WILL BE.

I HAVE ATTACHED A SUMMARY OF H.R. 2584, ALONG WITH LETTERS OF ENDORSEMENT FOR THE SUBCOMMITTEE'S REVIEW AND I LOOK FORWARD TO WORKING WITH ALL OF YOU IN OUR EFFORTS TO REAUTHORIZE THE HAZARDOUS MATERIALS TRANSPORTATION ACT.

THANK YOU AGAIN FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND TRUST THAT WE ARE ALL IN AGREEMENT ON THE NEED TO FURTHER PROTECT PUBLIC HEALTH AND SAFETY.

Senator EXON. Thank you very much, Congressman Applegate. We do appreciate, with your expertise and knowledge of this, that you have taken the time to come over here and help us out with your testimony today.

I just have one question of you. What is your view of this matter that has been hinted at, or brought out even early in the session? There can be no argument, can there, given the interstate commerce laws of this land, that this is primarily a Federal matter that should be primarily resolved and directed at the Federal level? Do you agree with that?

Mr. APPLEGATE. Yes. I think it has to be Federal.

Senator EXON. What about the matter of the individual states passing individual laws, and how that might or might not conflict with what we think is the prime responsibility of the Federal Government under the commerce laws? What is your view of that?

Mr. APPLEGATE. Well, apparently Ohio, their courts have decreed apparently—and I have not read that. I do not know exactly what it is, except that they have said that the states would be the governing body.

However, it seems to me that it takes an action by the United States Congress to give to the states the authority to be able to judge or to have the authority to administer interstate transportation. That, I think, is contained with the interstate commerce provisions of the Constitution. I think this comes within the realm of Federal, and not the state. I think the state has no business whatsoever being involved in it.

Senator EXON. Thank you for saying that, because one of the problems that I think we have, as far as the transportation industry is concerned, is, unless we have a Federal law on this matter we could have states popping up and putting out individual laws, and we would be right back at a much more serious area.

But back to the arguments that have been going on for years that I think have been finally resolved now, but are still going on and are still of prime concern, about speed limits, weight limits and all of these kinds of things.

If you start from California to New York with some kind of load, whether it is hazardous materials or otherwise, it places a terrible burden on the transportation industry itself if their people have to stop at the state lines to see what the rules and regulations are of the state they are in. I am glad you have clarified your position on that matter.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

In your example, you said, if I understood you right, that it took 10 hours in that Miamisburg example for the police and fire people to determine what was being carried, because the person refused to turn over the manifest. Is that what you said?

Mr. APPLEGATE. Yes.

Senator KASTEN. What happened to that individual who refused to turn over the manifest?

Mr. APPLEGATE. I am not sure.

Senator KASTEN. Are you saying that there was a driver or someone with him who in fact had a manifest and would not give it to

the authorities, or was there no manifest on board and they could not get back to the source—what was the circumstance of that?

Mr. APPLEGATE. The knowledge that I have is that it was the conductor on the railroad that had the manifest, and he, for whatever reason, did not want to turn that manifest over to the chief. The fire chief in Miamisburg has testified to that. He is very strongly in support of legislation that would correct that.

Senator KASTEN. Well, I am going to ask the railroad people or whoever else might be coming up—I do not know the answer to my question, but that just seems to be crazy.

Mr. APPLEGATE. Yes.

Senator KASTEN. That ought to be a crime, if it is not.

Mr. APPLEGATE. Yes.

Senator KASTEN. We can put that in legislation. You might even want to be able to somehow have duplicates, or something like that, on board. But that is just—I mean, whether we go to a computerized system or not, we still should have the information in the manifest available to the authorities at the scene of the accident. You have a good idea with a computer, but it seems to me we have to fix this. Would you agree?

Mr. APPLEGATE. I agree, and it is my understanding that representative Tony Hall who represents that area has legislation in to correct that specific point, and you can understand, too, I am sure, that had there been a very serious catastrophe that had happened, the hullabaloo that would have been raised with the railroad and with the individual that held on to the manifest.

Senator KASTEN. Well, we are going to find out later today whether this is railroad policy or whether the individual employee was acting on his own, or what the situation was, but I think, Mr. Chairman, that is something that we could work with them and clear up with regard to a conductor or truck driver. Whoever is in charge ought to be able to tell authorities at the scene of an accident what they are carrying.

Senator EXON. Yes.

Senator KASTEN. You talked about cost. I am concerned not only about cost but also about the system.

If I think of how much work we do trying to help constituents with Social Security problems, for example, or how much work we do trying to help constituents with veterans problems, for example, and our case workers find out, well, all the information is in the computer. Or how much work we have in trying to help our constituents with IRS problems, and all of the different kinds of questions and problems that are raised regarding the IRS. It seems to me, if I understand what I am talking about, we are talking about roughly 500,000 shipping papers a day.

Is my number the same as yours?

Mr. APPLEGATE. 500,000 shipments, that would not necessarily mean that 500,000 would have to comply with this law. It would be up to the Secretary of Defense.

Senator KASTEN. The Secretary of Defense?

Mr. APPLEGATE. I am sorry, I mean the Secretary of Transportation. The chances are it would not involve gasoline, oil and things of that nature.

Senator KASTEN. But if a shipment contained two or three different materials, all of which would be classified as hazardous, that one shipment could in fact generate three forms, also, so it could work either way. Is that right?

Mr. APPLEGATE. Well, you would have one manifest with one shipment. It would show everything that is in there.

Senator KASTEN. In an attempt to consolidate this information on a per-vehicle basis so you would know what the vehicle was, so if, for example, the materials came to a central place then were taken off of one truck and put on another truck, or if they were taken off one truck and put on a railroad, that would be a change which would have to go back into the computer.

Mr. APPLEGATE. The manifest would still go with it, and it would be one fee.

But let me just say this, Senator, if I may. What we are doing is, we are not getting down to the very fine, technical aspects of this, and much of this would be left up to the Secretary of Transportation, but our intent would be that upon leaving a generator you would have one manifest that they would pay for and it could make different stops, but the manifest and the one fee would continue on with whatever changes.

Senator KASTEN. You would pay for this—at least, you envision paying for this basically with a user fee?

Mr. APPLEGATE. Yes, one time.

Senator KASTEN. We have estimates that the cost to each generator for each shipment would be roughly $12. Is that close to what you were coming up with, too, our estimates?

Mr. APPLEGATE. No, not really. We had legislation last year, which was H.R. 3334, and in that we had established $12 per fee. That seems to be a figure that everybody wants to use, because it seems excessive, and at the time that it was put in I, too, thought it was excessive.

I thought then that the best thing would be to leave it up to the Secretary of Transportation for him to make the determination through the bidding process, and so it may—and it depends upon what the costs may be. As I say, we may be talking about 200,000, or 250,000, instead of 500,000, and we only may be talking about $3 or $4 or $5 and not $12. We do not know that as of this moment, because we do not have access to figures as to what the total cost would be.

Senator KASTEN. We are going to hear from them in a moment, but I simply wanted to point out that at that rate, and 183 million entries per year, which is what we would end up with according to the calculations coming from a number of different offices, we are talking about costing generators $2.2 billion a year.

Mr. APPLEGATE. That is exactly right.

Senator KASTEN. That is a big tax, and it is something we have to think about. But frankly, I am equally concerned about the fact that we cannot get straight answers from Social Security and Veterans and IRS, and I am not sure, with all the best intentions and even at that cost, that we could develop a system that would do what you hope to do, although I agree with your goals.

Mr. Chairman, thank you.

Mr. APPLEGATE. I agree with your analogy. We, of course, on the House side deal a lot with those same things. They are the same problems on the same computers. They do not get any better over there than they do here, because we are using the same ones, I guess. They are bad.

Senator KASTEN. I might say with very little cost we might be able to solve this manifest problem a whole lot faster than with this computer concept. Let us see if we can do that, Mr. Chairman.

Mr. APPLEGATE. Yes, we hope so.

Senator EXON. Senator Kasten, thank you very much. Senator Burns.

Senator BURNS. Thank you, Mr. Chairman. I have no questions.

Senator EXON. Thank you, Congressman, for coming over here today.

We have heard something about this manifest problem that may be addressed in legislation. Some of the situations may be solved with more than one manifest—duplicate or triplicate manifest.

As I understand that particular case, the railroad employee—and we will get into this with the railroads a little more in subsequent testimony—evidently the railroad employee was not sure who he should turn the manifest over to, whether it was the local or state authorities, which does not sound to me like a very good excuse when we have an emergency of that magnitude at hand.

Whether there are criminal penalties for that or not, I do not know, or whether there should be, but it would seem to me that with what can be caused as a result of these accidents—a lot of expensive moving, clearing people out—certainly the railroad, it would seem to me, would be liable for civil penalties through action in the courts, but we will get into that.

Thank you very much for being here and for your testimony.

Mr. APPLEGATE. May I just say one thing here? Congressman Sherry Boehlert, who is the co-sponsor of this legislation, is over and very active on the agriculture bill today, and he wanted to be here to testify, and perhaps at another time.

Senator EXON. Thank you very much.

Our next witness, then, will be the Honorable Travis Dungan, the Administrator of Research and Special Programs Administration, the Department of Transportation. We welcome you, Mr. Dungan. Please come to the witness stand. Without objection, your full statement, as submitted for the record, will be included in the record at this point. I would appreciate very much at this time if you could summarize and give us your views, which are the views of the Administration.

STATEMENT OF TRAVIS P. DUNGAN, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ALAN ROBERTS, DIRECTOR, OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION; AND JUDITH KALETA, ACTING CHIEF COUNSEL

Mr. DUNGAN. Good morning, Mr. Chairman, Senator Kasten and members of the Subcommittee. I am pleased to be here today to testify for the first time before the Subcommittee and I appreciate

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this opportunity to address the Hazardous Materials Transportation Act reauthorization.

In conjunction with all the modes at DOT, the Research and Special Programs Administration is responsible for regulating the safe transportation of hazardous materials. I have with me today, to your right, Judith Kaleta, who is our new acting chief counsel, and to your left I have Alan Roberts, who is the Director of the Office of HAZMAT Transportation.

I would like to first discuss the bill which we have submitted on behalf of the Administration dealing with reauthorization of HMTA. We submitted it in July of 1989. The principal goal of our bill is to enhance HAZMAT transportation safety by establishing clear and consistent roles for Federal, state and local regulators of HAZMAT transportation.

The bill would expand the HMTA to encompass the regulation of intrastate shipments of hazardous materials and it would also increase the effectiveness of our program in the areas of preemption, routing and permitting. I will briefly describe these and try to remain within the 5-minute guideline.

First, in discussing preemption, our bill proposes that certain areas be carved out exclusively for Federal regulation. Those areas include the designation, description and classification of materials, the preparation of shipping documents, packaging, hazard communication, written incident or accident reporting, and container manufacture and testing.

We believe that Federal preemption in these six areas is very important to the balance between safety and interstate commerce. Our bill also recognizes the interests of the state and local governments in the transportation of hazardous materials. We provide that state and local laws and regulations may address anything that does not fall under the areas of Federal jurisdiction, which I just described.

We would also provide them with a binding ruling on whether or not a proposal that they make to regulate transportation of HAZMAT would be preempted by the Federal Government. This determination would then be appealable to district court.

In the area of routing, we have focused on highway routing, and we believe that there should be Federal standards for the determination of routes which should be used for the transportation of hazardous materials. We believe, however, that the state, local and tribal governments are actually best qualified to actually designate the routes within their jurisdictions.

So what we propose in our legislation—and this has been copied in some of the other legislation—is that we set Federal standards for determining these routes. We let the states and local communities decide on the actual routes, them, and the Federal Government would only intervene if there was a dispute between states that could not be resolved amicably.

The third area that our bill specifies is a limited safety permitting program for the carriers of the most hazardous materials. This is very important, because we propose this as an alternative to a broad, universal registration program.

By focusing on the most hazardous materials—in other words, explosives, radioactive material, extremely toxic by inhalation ma-

terials—with an actual safety permitting program which would have criteria by which carriers would be judged fit and qualified to carry these materials, we believe that our more narrowly focused but much more comprehensive program is a better alternative to broad registration which would include registering farmers, dry cleaners, and a multitude of small businesses. That concludes my discussion of the Administration proposal, H.R. 3229.

There is one other issue that I would like to address, and that is in the area of emergency response, or emergency preparedness. At the time we submitted our legislation, we had not come up with a program in this area.

After a lengthy and often difficult consultation process, DOT, FEMA, the Department of Labor, the Department of Energy, and the Environmental Protection Agency have developed a proposal that recognizes the important role of the Federal Government and the expertise and capability of each agency that can be brought to bear in emergency preparedness.

The Administration's proposal would provide for the assessment of the adequacy of state emergency preparedness programs. It would develop a coordinated training curriculum that would be put together by all five agencies so that you would not have conflicts in training materials among the five agencies.

It would develop a grant program using existing grant mechanisms at FEMA to fund state planning, exercising for emergency situations and actual response training. This program, as we propose it, would be authorized at $13 million for each of fiscal years 1992 and 1993 and $9 million for each of fiscal years 1994 and 1995 for a total of $44 million.

I am pleased to take this opportunity to discuss a resolution of the funding mechanism that we would use to fund this emergency preparedness initiative. What we propose is a user fee that would be applicable to bulk packagings having a capacity of greater than 3500 gallons that are used to transport hazardous materials.

The fee that we would charge would be no more than $100. Assessing user fees on the basis of the transportation of bulk hazardous materials would target the entities that generate the greatest risks based upon accident experience associated with HAZMAT transportation, and also that have the potential for spills that are of immediate, most frequent concern to emergency response personnel.

The user fee will also result in spreading the cost of the enhanced preparedness program over a very broad segment of the HAZMAT industry without imposing significant economic burdens on small businesses.

Verification of the payment of the user fee would be through the display of a unique and readily visible decal which would be attached to each bulk packaging tank or trailer. Each decal would be valid for one bulk packaging for one year, and a new decal would be required annually for the duration of the program, with the fee adjusted in accordance with authorizations and appropriations.

We believe that this emergency preparedness initiative is a responsible, cost-effective Federal initiative that will maintain substantial independence and flexibility for each state, while providing

some Federal expertise in dealing with the issue of preparedness for HAZMAT emergencies.

One of the other programs that we would be pushing with this would be regional response teams. Every emergency responder does not need to be trained intensively in every conceivable type of HAZMAT accident. What we would propose would be funding and training state regional response teams that would be able to act as, say, HAZMAT SWAT teams to come in after the first responders have taken care of the initial measures to deal with an accident.

I appreciate this opportunity you have allowed me to describe the original reauthorization bill that the Administration presented.

I would also like to present a couple of concerns that we have on S. 2318 and H.R. 2584.

These bills, which would establish a data center for all HAZMAT shipments, we do not believe would add to safety, and we believe might even compromise the safety of emergency responders.

Our analysis, looking at the track record of HAZMAT accidents and the fatalities involving emergency responders shows that no lives during the past 10 years would have been saved by a central data center. In fact, the errors that can be made in actually punching in the data for 500,000 or more shipments a day may actually compromise safety.

We have estimated and conferred with industry and done a lot of internal analyses, and the program cost of this proposal would be approximately $2.2 billion, although even larger estimates have been made. That amounts to a cost to industry of $33 million per day.

This concludes my statement, and I would be very pleased to answer questions you might have.

[The statement and questions and answers follows:]

ORAL STATEMENT

TRAVIS P. DUNGAN, ADMINISTRATOR

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

JULY 25, 1990

I am pleased to be here today to testify for the first time before the Subcommittee, and I appreciate this opportunity to address the reauthorization of the Hazardous Materials Transportation Act (HMTA).

The Research and Special Programs Administration (RSPA) is responsible for regulating the safe transportation of hazardous materials. I am accompanied today by Alan Roberts, Director of RSPA's Office of Hazardous Materials Transportation, and Judith Kaleta, RSPA's new Acting Chief Counsel.

H.R. 3229

Introduction

The Administration submitted its reauthorization bill to Congress in July 1989. The principal goal of our bill is to enhance hazardous materials transportation safety by

establishing clear and consistent roles for Federal, state, and local regulators of hazardous materials transportation. The bill would expand the HMTA to encompass the regulation of intrastate commerce, and increase its effectiveness in the areas of preemption, routing, and permitting. I will briefly describe the provisions proposed in each of these critical areas.

Preemption

1) Our bill establishes exclusive Federal statutory authority over the designation, description, and classification of hazardous materials; the preparation of shipping documents; packaging and hazard communication; written incident reporting; and container manufacture and testing. Federal preemption in these areas is critical to reduce the potential for conflicting state and local requirements that create confusion and may compromise safety.

2) Our bill recognizes the responsibility of state and local governments in the transportation of hazardous materials. The bill provides that state and local laws and regulations may address subjects not under exclusive Federal jurisdiction. These requirements would be evaluated against

preemption standards for possible conflicts with the HMTA, and we would issue a determination as to whether the state or local requirement was preempted. This determination would be immediately appealable to a United States district court.

Routing

The second major component of our proposal is highway routing. RSPA proposes to mandate uniform Federal highway routing standards for routing designations. State, Tribal, and local governments adopting hazardous materials route designations would be required to do so in conformance with Federal standards which would be established by rulemaking. DOT would only resolve disputes between or among states. Rules would be issued outlining DOT dispute resolution procedures. Disputes would be resolved in favor of those states that complied with Federal standards in adopting highway routes, and demonstrated that the routes selected provided the required level of safety without unreasonably burdening commerce.

Permitting

The third major component of our bill authorizes DOT to establish a limited safety permitting program applicable to highway carriers of hazardous materials which present either a high degree of risk in transportation or a significant concern to the public.

A limited Federal permitting program would generate names and addresses of carriers transporting specific materials, allowing DOT and the states to focus inspections and enforcement on these high-risk carriers.

Permit fees would be established to assure recovery of the entire cost of the permitting program by DOT. We anticipate that the program would include approximately 1,500 carriers, and that each carrier would be required to pay a yearly permitting fee of approximately $500.

Conclusion

That concludes my discussion of H.R. 3229. We continue to support the preemption, routing, and permitting provisions proposed in our bill. Before reauthorization can become a

reality, however, one of the key issues to be resolved is the Federal government's role in hazardous materials emergency preparedness. I would now like to address our initiative on that important issue.

Administration Emergency Preparedness Initiative

After a lengthy and often difficult consultation process, DOT, the Federal Emergency Management Agency (FEMA), the Department of Labor (DOL), the Department of Energy (DOE), and the Environmental Protection Agency (EPA) -- have developed a proposal that recognizes the important role of the Federal government, and the expertise and capability of each agency that can be brought to bear on this issue. The Administration's proposal would provide for assessment of the adequacy of state emergency preparedness programs, development of a training curriculum for delivery to states, and a grant program to fund state planning, exercising, and training for response to hazardous materials emergencies.

The emergency preparedness program would be authorized at $13 million for each of fiscal years 1992 and 1993, and $9 million for each of fiscal years 1994 and 1995, for a total of $44 million. I am pleased to take this opportunity to announce an Administration agreement as to the funding of our emergency preparedness program. The funding is to come from a

user fee applicable to bulk packagings having a capacity greater than 3,500 gallons that are used to transport hazardous materials. The fee is not to exceed $100 for each bulk packaging.

Assessing user fees on the basis of transportation of bulk hazardous materials will target the entities that generate the greatest risks (based on accident experience) associated with hazardous materials transportation and have the potential for spills that are of immediate and most frequent concern to emergency response personnel. The user fee will also result in spreading the cost of the enhanced preparedness program over a broad segment of the hazardous materials industry, without imposing a significant economic burden on small businesses. Verification of payment of the user fee would be through the display of a unique and readily visible decal attached to each bulk packaging subject to the user fee. Each decal would be valid for one bulk packaging for one year, and a new decal would be required annually for the duration of the program, with the fee adjusted in accordance with authorizations and appropriations.

We believe our emergency preparedness initiative is responsible, cost-effective, and will maintain substantial independence and flexibility for each state in managing hazardous materials emergency preparedness. Our legislative

proposal has cleared the Administration, and we will be forwarding that proposal to Congress shortly.

Conclusion

Thank you for allowing me to describe our reauthorization bill and our emergency preparedness initiative. I would like to express some concerns over the legislation previously described, S. 2381 and H.R. 2584. These bills - to establish a data center for haz mat shipments - would not add to safety and might even compromise it. Our analysis shows that these bills would not have saved any lives in the last two years. Moreover, these bills would cost industry as much as $33 million per day. This concludes my statement and I would be pleased to answer any questions you may have.

Registration

QUESTION: DOT currently has authority to require the registration of shippers, carriers, and container manufacturers. Yet, this authority has not been exercised -- even for manufacturers or carriers of highly hazardous commodities. The U.S. General Accounting Office (GAO) has twice -- in 1980 and again last year -- recommended that your agency establish a mandatory registration program for hazardous materials shippers. Can you say with confidence that DOT has all the information it needs to properly target its enforcement efforts without registration?

ANSWER: RSPA has continued to resist calls to engage in a wholesale "universal" registration program because the effort would merely duplicate much of the information RSPA and other modal administrations already have.
RSPA registration procedures capture the company names and locations of a wide and significant number of hazardous materials transporters. These include: drum reconditioners, cylinder testers and repairers, and thousands of cargo tank, rail tank car and other container manufacturers' symbol registrations.

A universal registration program would add only the tens of thousands of small shippers who may periodically offer hazardous materials for transportation and thereby become subject to the HMTA. RSPA cannot justify the effort necessary to identify and collect information on these small shippers on the basis of either economics or safety.

RSPA has repeatedly expanded the scope of its registration program and its management information system on the community it regulates on a selective and carefully justified basis. A case in point is Docket HM-183 which resulted in the registration of persons who manufacture, test, repair or certify specification cargo tanks.

RSPA's legislative proposal would also establish a limited permitting system for highway carriers transporting materials which are extremely toxic by inhalation, Class A and B explosives, and highway route controlled quantities of radioactive materials.

RSPA knows of no major shipper of hazardous materials that is not already identified in existing records. Given this already broad base of information on the regulated industry, and the estimable record of RSPA's hazardous materials inspection and enforcement program, we believe that DOT has sufficient information to properly target its enforcement efforts without registration.

GAO Criticisms

QUESTION: A series of GAO reports released last year criticized the Federal Railroad Administration for failing to provide adequate guidance to its inspectors, for not using a systematic approach to target high-risk shippers and railroads, for inaccurate keeping of statistics, and for having only 28 hazmat inspectors to cover all the railroads and 230,000 miles of track. GAO also criticized your agency for failing to check the RSPA accident data base with other Federal agencies. What steps have been taken within DOT to respond to these reports?

ANSWER: RSPA established a mechanism in 1987 to compare the reports of hazardous materials incidents reported telephonically to the National Response Center to the reports submitted on DOT Form 5800.1. Over the last three years, this effort has resulted in the issuance of 74 enforcement actions.

For rail incidents reported either to RSPA or the Federal Railroad Administration (FRA), each report is now systematically correlated by both RSPA and the FRA to their respective set of reports. When an FRA report does not correspond to an RSPA report, it is transmitted to the OHMT's Enforcement Division for action. The FRA pursues a similar course of action. Since this procedure began, 34 reports have been referred to the OHMT Enforcement Division. Of these 34 reports, 18 have been resolved, with only three being required to be reported to RSPA.

The Federal Highway Administration has supplied the RSPA with tapes of reports of highway incidents for 1987 and 1988. The computer tapes are being used to establish the feasibility of correlating and cross checking the FHWA and RSPA incident data for completeness and consistency.

Motor Carrier Permits

QUESTION: The Administration's hazardous materials bill proposes to establish a permit requirement for trucks carrying certain high-risk commodities. Please comment further on this, including the sufficiency of the list of cargoes for which permits would be required under your bill.

ANSWER: If authorized to issue or withhold a permit, RSPA and FHWA could make a determination of a carrier's safety fitness before that carrier began transporting high risk materials. To implement such a program, RSPA and FHWA would: (1) establish effective procedural regulations to ensure due process; (2) physically inspect each carrier's operations as an essential element of the program to determine fitness; and, (3) establish a fee collection and management process. Since this program could affect a motor carrier's ability to stay in business, we believe it should be implemented with great care, the first phase being limited to the fewer than 1500 carriers who transport extremely hazardous materials. A follow-up assessment of the effectiveness of the program should be conducted before the program is expanded to additional materials.

Consistent with the view that a permit program be implemented gradually, the Administration's bill would limit its application to specified types of materials. It would include Class A and B Explosives because these have a potential for mass explosion that could cause serious consequences over wide areas. Similarly, materials that are extremely toxic by inhalation can spread over wide areas in lethal concentrations. Finally, high level radioactive materials present a high risk to life and health which, although controlled by extraordinary packaging, warrants their inclusion in a limited permit program.

"Inconsistency" Review Process

QUESTION: DOT currently employs an "inconsistency" review and a waiver process to determine whether State and local hazmat regulations should be preempted by the Federal government. How well does the current process work, from your point of view, and what changes might you propose in this area?

ANSWER: We believe the current inconsistency ruling process has worked well. The inconsistency process contained in RSPA's procedural regulations implements the HMTA's preemption of "inconsistent" state or local requirements. Such requirements are inconsistent if (1) compliance with both the non-Federal requirement and the Federal requirement is not possible, or (2) the non-Federal requirement-is an obstacle to the achievement of the HMTA or the Hazardous Materials Regulations.

While not legally binding, the current process provides a less costly alternative to litigation. In addition, RSPA's advisory opinions have been cited with approval and accorded substantial deference by the courts. States and municipalities have sought our opinion on whether their requirements are consistent with the HMTA and the HMR. In the past three years, three states and two municipalities have applied for inconsistency rulings. We believe states and political subdivisions are eager to participate in the process and consider RSPA's opinion valuable.

To further strengthen this process and to provide greater certainty to states, political subdivisions, and the regulated community, we have proposed in the Administration's HMTA reauthorization bill to codify this process in the statute. Codifying the process would provide a statutory definition of preemption and create a more formal body of precedent, thereby reducing the number of applications.

Rail Enforcement

QUESTION: As you are aware, questions have been raised regarding the proper degree of enforcement authority that should be exercised by States against railroads for hazmat violations. Whereas States have clear enforcement authority over shipments by truck, recent Court decisions have restricted State authority over railroads. What are your views regarding the proper level of enforcement that is necessary?

ANSWER: The Department supports a strong state role in the regulation of hazardous materials transportation and has encouraged a close Federal/state partnership through the Cooperative Hazardous Materials Enforcement Development (COHMED) Program. We support national uniformity to enhance the safe transportation of hazardous materials by rail and believe the existing FRA state participation program should be expanded to allow states to inspect for violations of the hazardous materials regulations in the same manner that they now inspect for violations of the Federal rail safety regulations.

Training

QUESTION: What are your views toward the Federal government's obligation to ensure that any Federal funds designated for training meet the training needs of local communities?

ANSWER: I am firmly committed to ensuring that the needs of local communities are addressed in any Federally funded program. That is also the position taken in the Administration's initiative on emergency preparedness, which was developed through the closely coordinated efforts of the Department of Transportation and four other agencies: the Departments of Energy and Labor, the Federal Emergency Management Agency and the Environmental Protection Agency.

All five agencies agree that quality is needed not only in training, but also in hazards analysis and planning. Therefore, it is appropriate for the Federal government to assist in the assessment of the adequacy of emergency preparedness, to provide advice and assistance on meeting identified needs, and to provide leadership to public officials who must take responsibility for management of hazardous materials and response to hazardous materials incidents.

Our plan is to work with a few communities in each state to closely examine critical functional areas in emergency planning and to have State and regional personnel pass on these techniques to others through a voluntary, ongoing review process. With specific reference to training, we will develop and distribute standardized curricula to key State personnel for their delivery in "train-the-trainer" format. This will ensure not only that local communities receive training, but also that they receive training which meets their needs and is of a uniform high quality.

SENATOR KASTEN: Mr. Dungan, I have several questions for you or the program staff with you today.

During this hearing, we will receive testimony from a wide range of interested parties concerning the safe transportation of hazardous materials. Of great interest to me and many of these witnesses is: WHAT CAN WE DO TO BE BETTER PREPARED WHEN TRANSPORTATION ACCIDENTS INVOLVING HAZARDOUS MATERIALS OCCUR?

The Bhopal, India tragedy, while it did not involve transportation, shows what could happen when a catastrophic accident involving H/M occurs. But, I think it is important that throughout this hearing and the deliberations on the reauthorization of the Hazardous Materials Transportation Act, that we retain a balanced perspective on the hazardous materials transportation issue.

Are there Poison gases of the Poison A class being transported by rail and highway in this country?

ANSWER: Yes.

SENATOR KASTEN: Approximately how many rail car or cargo tank loads of these poisons, the Poison A class, are transported each year?

ANSWER: Approximately 2,000.

SENATOR KASTEN: If a rail car transporting one of these gases were to derail, what would you recommend that Emergency Response Personnel do?

ANSWER: Emergency Response Personnel should follow DOT's Emergency Response Guidebook which provides guidance on:

identifying hazardous materials;
establishing communications with CHEMTREC;
potential hazards;
emergency actions;
high risk materials; and,
evacuation distances.

DOT has distributed more than 2 million copies of the Emergency Response Guidebook without charge to emergency response personnel nationwide.

SENATOR KASTEN: If there are tens of thousands of loads of Poison A materials transported each year, how many Emergency Response Personnel were killed by these materials last year due to their release during a transportation accident?

ANSWER: None.

SENATOR KASTEN: Each year, there are MILLIONS of loads of hazardous materials transported by rail and highway. Based on data available to DOT, how many Emergency Response Personnel were killed last year due to the release of any hazardous materials during a transportation accident?

ANSWER: None.

SENATOR KASTEN: Mr. Dungan, based on these answers, do you believe that there are major deficiencies in the level of safety being provided for the American people by the current hazardous materials regulations?

ANSWER: There are approximately 500,000 hazardous materials shipments per day. In 1989, there were eight reported fatalities due to the release of hazardous materials. Given that record, no major deficiencies exist but we do see some room for improvement. These improvements are reflected in our legislative proposal, emergency preparedness initiative and soon to be implemented improved emergency response information requirements.

SENATOR KASTEN: Mr. Dungan, in your testimony, you described many of RSPA's successful programs and initiatives. Today we will be hearing a variety of testimony dealing with the transportation of hazardous materials by rail, air, water, and highway. In light of this, it would be helpful to have a better understanding of the hazardous materials programs managed by the other modes. Would you take a moment and briefly describe the size and scope of these programs?

ANSWER: Although the hazardous materials rulemaking program is managed centrally by RSPA, the responsibility for enforcement of those regulations is divided among RSPA, FAA, FHWA, FRA and USCG. The five modal administrations each enforce the hazardous materials regulations with respect to their particular mode and RSPA enforces the regulations regarding multimodal transportation, packaging manufacturers and testing facilities.

SENATOR KASTEN: Do you believe the various modal hazardous materials programs are effective?

ANSWER: Yes, the Department through its modal hazardous materials enforcement program, in conjunction with state inspection and enforcement efforts, provides a very effective national response to the risks posed by hazardous materials transportation.

SENATOR KASTEN: Approximately how many PEOPLE (not necessarily Emergency Response Personnel) are killed each year due to the RELEASE OF HAZARDOUS MATERIALS in accidents?

ANSWER: For the 10-year period 1980-1989, there has been an average of 11 fatalities per year due to the release of hazardous materials in transportation.

SENATOR KASTEN: In recent years, there has been a growth of concern among the American people concerning hazardous materials and hazardous wastes, given the dramatic news coverage of instances such as Love Canal. Frankly, it seems that people, are more afraid of hazardous wastes than hazardous materials. Could you clarify what these two classes are?

ANSWER: The term "hazardous materials" describes materials in a quantity and form which have been determined by the Secretary to pose a risk to safety during transport. This includes both "virgin" materials and wastes. The term "hazardous waste" describes any material that is subject to the EPA's hazardous waste manifest requirements. Hazardous wastes are usually spent or depleted hazardous materials and are usually less dangerous than the virgin material from which they were derived.

SENATOR KASTEN: There are proposals to require the establishment of a "Central Reporting System and Data Center" (S.2318). It requires ANY GENERATOR of a shipment of hazardous materials to submit a copy of the hazardous materials manifest to the central reporting system and data center. The manifest is to contain data concerning the volume and type of hazardous materials being transported and the license plate or identifying number of the carrier of the shipment. This data system is to have the capacity to handle 500,000 computer based communication transactions each day.

In your testimony you stated that there are 500,000 hazardous materials shipments each day. I would like to ask you a few questions about how you, as a regulator, would manage a program of these dimensions. I recognize that you probably have not had a chance to evaluate this proposal extensively. But, I would appreciate your opinions and estimates regarding the effectiveness and enforceability of such a system.

How many shippers of hazardous materials are there in the U.S.? Since shipments into the United States from Canada would also be covered, how many shippers of hazardous materials are there in Canada?

ANSWER: Including small business entities that ship occasionally, there are no fewer than 500,000 shippers of hazardous materials. We do not have a confident estimate of the number of Canadian shippers of hazardous materials.

SENATOR KASTEN: A key component of this proposal is the entry of the license plate number of the truck picking up the hazardous materials shipment. Apparently, the goal is to be able to type in a truck's license number into a computer and get a full and complete listing of all hazardous materials on board that vehicle. Based on the practical experience of you and your staff, what percentage of hazardous materials shipments are transported as part of a Less Than Load (LTL) shipment?

ANSWER: Approximately 300,000 LTL shipments of hazardous materials are transported daily; each is handled an average of four times.

SENATOR KASTEN: As I understand LTL operations such as Yellow Freight's or Roadway's, they pick up small shipments from a large number of shippers and take these shipments back to a break-bulk terminal where they are reconsolidated into truck loads destined for different parts of the country. In some of these operations, it may not be unusual to have the load broken down and reconsolidated several times before the shipment is ultimately delivered to the final destination. If DOT were given the responsibility to develop this computer system, including the requirement that the generator of the shipment enter into the system information about the hazardous materials and vehicle picking it up, how would you maintain the accuracy of the data system in an LTL transportation environment?

ANSWER: DOT could not ensure the accuracy of a massive system in which the data can become obsolete within an hour of filing.

SENATOR KASTEN: A basic assumption of this proposal is that improved information will be made available to Emergency Response Personnel. This is certainly an admirable goal. Unfortunately, this proposal depends upon a very undependable element -- humans. Again based on your experience, what percentage of shipping papers are improperly prepared by the shipper? In your opinion, are these mistakes made on purpose by the shipper?

ANSWER: Shipping paper requirements are one of the most enforced areas of DOT's inspection program. Only a small percentage of all shipping papers are improperly prepared. In most cases violations are not willful, but there have been instances when shippers intentionally failed to properly prepare the shipping papers in order to avoid additional transportation charges.

SENATOR KASTEN: Mr. Dungan, are you familiar with the CHEMNET System that is available through the Chemical Manufacturers Association? As I understand it, experts are available through this program to assist in managing a hazardous materials catastrophe. Is this a good program?

ANSWER: Yes, the CHEMNET system is a new and effective industry mutual aid program.

SENATOR KASTEN: It seems that in this budget deficit environment, the last thing we want to do at the Federal or State level is reinvent the wheel, especially if the private sector has already developed something that can work. What has your agency done to advertise the availability of this private sector assistance to emergency response teams throughout the country? What can DOT do to improve awareness about this program?

ANSWER: I strongly support your view that government agencies should not waste resources creating systems that already exist. Too often this occurs because planners are unaware of what resources are, in fact, available. To ameliorate this situation, we have developed and implemented a variety of informational programs for the precise purpose of informing emergency services personnel of the tools at their disposal. These include special presentations at public meetings on hazardous materials safety, a continuing emergency response component in the Cooperative Hazardous Materials Enforcement Development (COHMED) program, and a 24-hour electronic bulletin board, the hazardous materials information exchange (HMIX), by which emergency responders throughout the country can not only obtain information but also share their own views and experiences. The use of videotape technology offers a relatively low-cost way to disseminate information about available programs and greater use may be made of this technique in future.

SENATOR KASTEN: This nation has many critical crime concerns; concerns that are reflected in the recent crime bill. Although the drug distribution problem is very pervasive and although hostage situations occur daily throughout the United States, every police officer in every city, town, and village in this country has not been trained to deal with every crisis situation. The law enforcement community has opted to create SWAT teams; teams that receive recurring state of the art training to deal with the most extraordinary situations.

Mr. Dungan, you state that in the opinion of the Department of Transportation, there is currently not a major problem with this Nation's hazardous materials transportation system. However, in order to provide an extra measure of protection, in the event a catastrophic accident occurs, what can be done to promote hazardous materials SWAT teams -- teams that are expertly trained and well equipped and are ready at a moment's notice to travel to any hazardous materials incident in the State? What are your thoughts about this concept?

ANSWER: I strongly support the concept of regional response teams. They provide a cost-effective way to ensure adequate protection of contiguous jurisdictions. We have stressed the importance of regional teams in the emergency preparedness enhancement program that we have initiated together with the Federal Emergency Management Agency, Department of Energy, the Environmental Protection Agency, and the Department of Labor. This concept has been applied with great success by the states of Virginia and Tennessee, which can be expected to provide peer support for future applications.

SENATOR KASTEN: Mr. Dungan, I'm interested in your views concerning the issue of H/M routing controls. Obviously no one wants to have the most dangerous classes of H/M transported by their homes. On the other hand, routing restrictions concentrate the volume of H/M to only a few routes, impacting the people living on these routes more severely. In the Department of Transportation's National Transportation Plan, the Highway System of National Significance is described. Basically, this system is composed of all the Interstate highways and most of the Primary routes, essentially the best maintained and safest highways in the country, would it not be appropriate to limit, in a broad sense, the transportation of H/M to highways on the Highway System of National Significance, rather than trying to get into individual evaluations of specific highways?

ANSWER: RSPA believes that there is a need for a regulatory approach to the routing of hazardous materials, but it must be one that is flexible. We do not believe that the states should be excluded from routing decisions, but we do believe that uniform national standards are needed to guide the states in making routing decisions.

SENATOR KASTEN: Mr. Dungan, in your testimony, you described the twelve free-standing hazardous materials training modules currently being developed by your agency. Would these modules be of assistance in the training of Emergency Response Personnel to more effectively respond to transportation accidents involving the release of hazardous materials?

ANSWER: Yes. Although the modules primarily address compliance with the hazardous materials regulations, they offer a detailed explanation of regulatory requirements that are of direct relevance to Emergency Response Personnel. For example, awareness of the hazard communication system would ensure that responders knew where to look for placards or other markings that would communicate the nature of the materials involved in an accident; and familiarity with the general design standards of a tank truck would enable responders to look for pressure relief valves or other indications of the condition of the transport vehicle.

SENATOR KASTEN: Does your Agency have plans to develop additional training programs for Emergency Response Personnel?

ANSWER: Yes. Upon completion of the first twelve training modules, we plan to apply the same technique to the training needs of Emergency Response Personnel.

Senator EXON. Mr. Dungan, thank you very much for your very interesting testimony. You brought up a lot of very interesting points.

When we have been talking about how we are going to keep track of all this material and alert people with regard to trucks, have we ever explored the possibility of using our truck weigh stations that trucks go through sometime when they go through a state? Have we ever explored the possibility of having manifests presented at these truck weigh stations; i.e., at the time that a truck enters a state it would certify what materials they have? Thus, if we have an accident we would be able to get back to a central point and know when that truck passed that central point, and it would be helpful to identify what was on there.

Has that ever been explored, or is that a useful suggestion?

Mr. DUNGAN. We have a comprehensive system in place which calls for the placarding of these trucks and calls for a manifest to be located in a particular location for each truck, and there are a number of other things that we are now requiring such as the 24-hour contact with the company shipping the materials so we can find out in an emergency what exactly is on the truck if the manifest is not clear.

We presently do use the Federal Highway Administration's Office of Motor Carriers to take a look at the placarding, the manifests and inspect the vehicles as they pass through these stations. There is no central data system that keeps track of every shipment.

Given that we have 500,000 shipments per day, the cost of a system that would have the capability of tracking each shipment would be very expensive. So there is no existing system that tracks every shipment, but there are inspections made at these weigh stations to make sure that current rules are complied with.

Just to talk about the track record of HAZMAT transportation safety, during the past 10 years the average number of fatalities based upon releases from HAZMAT accidents totals about 11 fatalities per year. So when we start talking about a $2.2 billion program, you are talking about something that is very burdensome. We need to look very closely at the cost of the program because it is not clear that a central data program would have even prevented any of the deaths that did take place.

Senator EXON. Well, Mr. Dungan, I recognize that fact, but I am talking about not only the extreme inconvenience but the extreme danger that has taken place in numerous places in the United States where the people on the scene did not know what to do. You have heard some testimony on that this morning.

What happens to that manifest or placard or whatever you call it in the truck if the truck turns over and is burning? Is it destroyed, and does that complicate the problem, or are they in a fireproof facility of some kind in the truck?

Mr. DUNGAN. Well, the placards are located on all four sides of the truck so as to aid in observing what the placard says. The manifests are located in the truck.

I think what I would like to do is have our director of the Office of HAZMAT Transportation talk a little bit more about the specifics.

Senator EXON. I am talking about the extreme case where a truck turns over and it is a ball of fire. That is certainly a complicating factor to the local people, is that not true?

Mr. ROBERTS. Senator, there have been extreme cases where you might say the entire system has failed. One of the things in which there has been a big change in recent years in the emergency services is recognizing that fact and to not go charging in.

One of our big problems back in the 1960's when we had a number of major aceidents, was that you could not keep them from charging in without regard to the protective clothing that they had available to them and the identification of the cargo.

There has been a big change in the emergency response area in current times. Currently, one of the expressions that is given in the training programs is "if you don't know, don't go". There are a number of assumptions, such as if you see a cargo tank turned over and you cannot identify it, you stay away from it until you can get some proper identification about that vehicle.

Senator EXON. Let me get into the matter, Mr. Dungan, for just a minute if I may, and I hope you can be brief. There has been a whole series of GAO reports, many of them quite critical of the agency and how this has been handled.

Last year the GAO criticized the Federal Railroad Administration for failing to provide adequate guidance to its inspectors for not using a systematic approach for targeting high risk shippers and railroads, for inaccurate keeping of statistics and for having only 28 HAZMAT inspectors to cover all of the railroads and 230,000 miles of track.

GAO also criticized your agency for failing to check the RSPA accident data base before proceeding and bringing into the equation other Federal agencies.

What steps have been taken within the Department of Transportation to respond to these reports, or are they not accurate in the opinion of the Department?

Mr. DUNGAN. I would say that the concerns that were expressed by the GAO were shocking to us as well. That report was issued prior to a hearing similar to this one in which both Federal Rail Road Administrator Gil Carmichael and I responded to questions on this report.

I think Administrator Carmichael from the Federal Railroad Administration was as concerned about this as he could be, and he committed at that time to make drastic improvements in the rail safety inspection program. Gil and I have discussed this issue many times. We have discussed a lot of different alternatives as far as how the Department can improve the situation. I believe that Administrator Carmichael is making significant progress in this area.

One of the ways that he has talked about helping in this area is extending the Federal-State participation program so that states can actually start getting more involved in the hazardous materials area on the rail front.

I think this report was issued about six months ago. I think it would be premature to judge Gil Carmichael's efforts as a failure at this point. I believe this is his top priority——

Senator EXON. I did not say that his efforts were a failure, and I do not want you to be that defensive on this matter. I think Gil

Carmichael has indicated before this committee that he has some concern.

My question then is whether you, as the RSPA Administrator, are satisfied at this juncture with the corrective action that is being taken?

Mr. DUNGAN. Yes, I am satisfied at this juncture.

Let me go back and just say that I think one measure that you can use to evaluate the FRA's efforts would be the way they are getting through their enforcement actions. I know that Gil has set some very aggressive targets as far as the length of time between the observation of a violation and the actual enforcement action. I know that there has been a long backlog, and I think GAO was very critical of that.

I think Gil has made great strides in that area. If the problem should prove intractable, then I think we will need to look at possible alternatives. Certainly the first thing that needs to be done, which I believe Gil is working on, is extending that State participation program so that State inspectors can start reporting violations and referring them to the FRA for enforcement.

Senator EXON. Thank you, Mr. Dungan. I will have another question or two briefly for a second round, but my time is up.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

Mr. Dungan, as I understand it, the companies transporting hazardous materials follow specific requirements concerning the preparation of these shipping papers. They describe the type and class of the hazardous materials and requirements concerning where the shipping papers are kept, et cetera, and in the case of rail and highway transportation, requirements with regard to the placarding of the truck in addition to the shipping papers.

I want to talk just a little bit about these warning systems and how they could be improved. First of all, could the shipping papers be prepared so that average volunteer firemen, not somebody that is specially trained but an average volunteer fireman with training could understand more quickly and more clearly what materials are being transported?

Mr. DUNGAN. We do have regulations in this area, and we will have additional regulations going into effect beginning next year, but we require that the manifest list hazardous materials at the very top of the list so that the first thing an emergency responder sees is the hazardous material that is on board.

Can you repeat your question? I am sorry, Senator.

Senator KASTEN. My question is, could these documents not be prepared in a way so that an average volunteer fireman could understand them more readily and more quickly?

Mr. DUNGAN. I believe we have a pretty good system. One of the new things we would be requiring is a 24-hour contact number on the manifest so that the first responder can actually call any time, day or night, an 800 number that the company, the shipper, has specified, and can find out any additional information it may need that is not on the manifest.

Senator KASTEN. We are going to learn more about these papers and whatever they say, but there is a concern among some that we have got so much information that it is so complicated an average

person in an average emergency kind of a situation is not able to use this information simply because of the way it is put together—the format, the difficulty, whatever.

I just wanted to say that we want to work with you so that an average person, under conditions that will be emergency conditions, average emergency conditions, if you will, can work with and deal with the paper.

Let me ask also this. I was shocked, and I think it is outrageous if, in fact, an individual could wait for ten hours before turning over shipping papers. Are there relatively simple ways to improve the accessibility of shipping papers to emergency response personnel, and is there presently a law, rule or regulation that would deal with the question that came up with the previous witness?

Mr. DUNGAN. The regulations are clear that these manifests must be turned over to the first responders. In this particular case that we were discussing, I would like to ask Al Roberts, who was a witness on the scene of the accident, if he might just tell us very briefly what actually happened.

Senator KASTEN. You were there for 10 hours?

Mr. ROBERTS. No, sir. I was on the scene for 2 days, but I was not there for the first 10 hours.

Senator KASTEN. That would have really been extraordinary, if an official like you were there.

Mr. ROBERTS. Well, there were an awful lot of people there. I tried to stay out of everybody's hair. I was rather surprised at the way the statement is being made, because the NTSB published an official report on this accident, which we will be glad to supply.

There was some confusion about the placement of a sulfur car which was in the accident. My understanding is that the crew member who had the documents dropped them on the floor of the locomotive and they got scattered around, and there was some time in gathering them up.

Senator KASTEN. Ten hours?

Mr. ROBERTS. No, sir. He did not want to give up the information because there had been problems in the past where people have walked off with the information and then the carrier was charged or alleged not to have had the documents on the train. This is something we are working on right now with the FRA. My understanding, sir, is that the information about what was in that train was available within a matter of minutes, and I think we can come back and verify that with a follow-up to the record.

[The following information was subsequently received for the record:]

The following information is taken from National Transportation Safety Board Report HZM-87/01 in regard to the train derailment in Miamisburg, Ohio on July 8, 1986. Entries inside [ ] indicate the number of minutes from time of derailment and references to page numbers in the NTSB report.

The derailment occurred at 4:25 p.m. [page 1]

The conductor reviewed the waybills to determine what "Dangerous" commodities might be involved. [page 3]

Shortly after 4:31 p.m. [6 minutes] the first arriving local emergency personnel approached . . . a policeman and a firefighter . . . Placards were no longer in place on the ends and sides of the 30th car because they had been torn off during the derailment. [page 3]

At 4:37 p.m. [12 minutes] the B&O Dayton dispatcher contacted the Miamisburg Police Department reporting the derailment. [page 5]

Shortly afterward [time not specified] the conductor met the emergency responders. He advised them that "the car on fire was filled with yellow phosphorus which is a poison," and further added that the immediate area should be evacuated. [page 5]

While the above confirms that the emergency responders knew hazardous materials, including yellow phosphorus in particular, were involved in the derailment in a matter of minutes rather than hours, the NTSB concluded [page 45] that:

The lack of early information about the products and numbers of tank cars involved in the derailment, while not seriously affecting the initial emergency actions, made it more difficult to coordinate the response activities.

Cabooseless train operations require additional procedures to compensate for this different method of operation in order to provide emergency response personnel timely and accurate information regarding derailed cars.

Mr. DUNGAN. I think the situation was hard because of the way the train cars had derailed.

Mr. ROBERTS. There were questions about the placement of the sulfur car in the train. We have a numerically- numbered manifest system for placement of placarded cars in trains. This particular load of sulfur was not subject to our regulations.

Senator KASTEN. This leads to my next question with regard not to the documents but to the placarding systems. Could they not possibly be improved? Maybe you have just given me a perfect example.

Is there a way that we could make the placarding larger so that placards could be seen better at a distance by emergency response personnel. Or could we develop some kind of specific placarding entry so that the emergency response personnel do not have to get the shipping papers out of the truck?

In other words, they could see what kind of material it is by looking through binoculars or by identifying—in this example, maybe they could have found a sulfur car by some abbreviated kind of information that would appear on a placard. I do not know if this is practical or not, but is there a way that the placarding system could or should be improved?

Mr. ROBERTS. I should mention that every railroad car has a number on it displayed in rather large letters and numbers so the identification of a car, if the side of the car is visible at all, is usually not the problem.

Senator KASTEN. But Number 1562 does not tell him much, if it is the conductor that tells me what 1562 has in the car, and he cannot give me the papers or I cannot find the information.

Mr. ROBERTS. Well, if you call the 800 number of CHEMTREC, for example, which is in more than 2 million guide books that we have distributed, there is a numbering system that identifies every railroad car in the United States, and it is not too difficult to reach the people that operate a car and find out what is in it.

But the point here was, just being able to see that car at all—first of all the phosphorous car was in front of it. I do not think anybody was disputing the fact that there was phosphorous in that train. My understanding was that there was some difficulty identifying the sulfur car, which was sort of in a jumbled up mess behind, and so it was a matter of assessing from the documents, and otherwise, the placement of that car in the train to verify its presence.

Senator KASTEN. I do not want to get too involved in one particular accident and one particular train, or one particular sulfur car

that was mixed up with some rail cars in the back. We are talking about an overall set of issues here, and obviously whatever system was in place was not perfect.

Mr. Chairman, I see my time has expired. I do have a couple more questions, but could I ask one further question because it is along this line of reasoning, and then I will yield to you and will ask my other questions in the next 5 minutes?

Senator EXON. Go ahead.

Senator KASTEN. Finally, with regard to developing these different systems with both the placards and the manifest documents, it seems to me that there may be opportunities to involve state and local agencies more in the creation of a single set of national hazardous materials standards.

Has thought been given to establishing an advisory group made up of representatives of state and local government, or other entities involved in hazardous materials transporation, charged with the responsibility of evaluating some of these controversial hazardous materials issues and providing, in effect, consensus direction to the Department of Transportation on how to proceed with these issues? Can you involve them in this process so that we could get a consensus, overall national approach?

Mr. DUNGAN. Yes, sir, we have. We have an organization called CHOMED, Cooperative Hazardous Materials Enforcement Development), which involves 48 different states as well as local communities. It is a group all involved in the enforcement area for these regulations that meet twice a year. We work very closely with them, and it has been a very successful advisory group.

Senator KASTEN. Mr. Chairman, thank you.

Senator EXON. Thank you, Senator Kasten.

Let me explore this possibility a little bit further. All of these systems that we are talking about, computer systems, manifests and all of these kinds of things, emergency response teams—and you indicated earlier, Mr. Dungan that you thought there should be some regional emergency response teams, real specialists that could be called in when it appears that the locals are not properly trained—you know, I assume they would respond in helicopters of some kind.

Mr. DUNGAN. Yes, sir.

Senator EXON. What about some of the more basic things? Sometimes we go so far as to look to computers to solve all of our problems. We are familiar with the crossbones and skull that we see on potentially hazardous materials, but that does not tell us what is in there.

Have we ever gotten down to basics? Have we ever thought of requirements that would have steel-colored flags that could not burn up on the front and back of the truck, sticking up so that green means one of the most hazardous materials, and it could be readily identified?

Those steel flags could be changed by the shipper when they start out so that when the local people went on-site they could tell, unless it was a ball of fire, what was contained therein. Not going into the truck manifest, but seeing a red steel flag, or a green or orange or something, knowing there are some of the most hazardous materials?

What I am talking about is a more simplified form of on- the-spot determination without going through expensive computers, which might be good in the end. Have we talked about better identification on that truck that is turned over that the locals could be advised without getting into the manifest?

Mr. DUNGAN. Absolutely. That is what our placarding system involves. On all four sides of the truck there is a diagonal plate upon which the different types of materials based on U.N. classifications are shown, and placards things can be varied depending on what material is actually on the truck.

Senator EXON. How close do you have to get to actually see that?

Mr. DUNGAN. You can see that from a pretty good distance. It is not as large as the truck itself, but it is there, and it has worked.

Senator EXON. That placarding tells the local firemen what is in that?

Mr. DUNGAN. What it does is, it gives him the number and color of the placard so he can look it up in our response guidebook. Every 3 years, we distribute the emergency response guidebook. We have distributed 2 million copies, and we believe that that guidebook is in every police and fire vehicle in this country.

It is a very simple document. For every different placard it tells you exactly what to look out for, what to do. It also gives you the 800 number for CHEMTREC, which is a system sponsored by the Chemical Manufacturers Association which is staffed 24 hours a day, so that if the material in the emergency response guidebook is inadequate, or if there is any type of special situation or circumstance, that number can be called, and much more comprehensive information can be called up on a computer.

Senator EXON. Well, if that system works, why do we need this expensive database?

Mr. DUNGAN. Well, I am not sure we do. We do not support the database, because it is very expensive. I would say that the track record for hazardous materials transportation has been very good. During the past 10 years, the average number of fatalities resulting from a HAZMAT accident at a HAZMAT release has averaged about 11 fatalities a year. None of those fatalities has involved emergency responders.

Senator EXON. Do those requirements also pertain to railroad cars?

Mr. DUNGAN. Yes, they do.

Senator EXON. They are marked in a similar fashion to the trucks?

Mr. DUNGAN. Tank cars, yes.

Senator EXON. This is my last question, and we may have some additional questions for the record.

What is the safety situation with regard to transportation of high-level and low-level nuclear waste? And how satisfied is the Department with that at the present time?

We have a situation in Nebraska today where there is a great deal of controversy over the location of low-level nuclear waste, for example. And if that is ever built, low-level nuclear waste would be shipped from as far south as the Gulf port in Louisiana, most of the way across the Nation, north, to the extreme part of Nebraska, right below the South Dakota line, which is a long way north.

When the low-level and high-level nuclear waste facilities are identified, and let us talk about low-level particularly now, because there are scheduled to be many more of them than there are high-level, is the Department of Transportation consulted with the people who propose to build these in these particular states, with regard to the number of miles of shipment? Does that have anything to do with the location of where the facility should be?

It has never made much sense to me, since we are dealing with a very hazardous material, to be hauling things from New Orleans to the Missouri River on the southern part of the South Dakota/Nebraska border. That seems like we are just asking for difficulty.

Does the Department become involved in these things at all?

Mr. DUNGAN. We have become involved. We are very involved in the actual packaging and containers that this waste goes in. We are satisfied that those containers are effective and are not going to release any nuclear materials.

What I would like to do is have Al Roberts, who has worked on this issue in a little bit more detail, expand on that.

Mr. ROBERTS. I'll give you a brief answer, Senator, because the other one will take hours. When those sites are developed as part of these compacts, environmental assessments are prepared, and they are routinely forwarded through our office for review, relative to those aspects of the analyses that pertain to transportation. These materials are subject to our regulations.

We do have a comprehensive regulatory system for the transport of high- and low-level radioactive materials, and we are quite satisfied that the system is in place, and if everybody complies with it, it will provide an adequate level of safety for the movement of these materials.

Senator EXON. It would be better, though, would it not, from a safety standpoint, to limit as much as theoretically you can, the distance of miles of shipment. For example, it would certainly be safer for the public, it seems to me, if the transportation of low-level nuclear waste would only be 100 miles, rather than nearly 1,000 miles, as it is in the case that I just cited.

Do you ever look at it from that standpoint?

Mr. ROBERTS. That is a concept that is applied in the routing regulations we have for the transportation of high-level nuclear materials.

Senator EXON. How about low-level?

Mr. ROBERTS. It is also taken into account there through regulations. As specified, there will be no unnecessary delay. Now this is a difficult subject because of all of the other ramifications that have to do with the disposal of waste. And obviously a number of national policy issues are involved here.

Our role is to specify the safety standards for the movement of these materials. And when we are asked our opinion, obviously we would say the shorter the distance of the movement, the better. I think anybody would have to agree with that statement.

Senator EXON. Thank you.

I have no further questions. I will have some questions for the record that we would ask you to respond to as quickly as you can.

Senator Kasten, do you have anything further?

Senator KASTEN. Mr. Chairman, I have a number of questions that I would like to submit for the record, and I would ask just one question here. I note that we have a full day ahead of us, and I am told that we have stacked votes in the Budget Committee coming up, so you and I are going to have an interesting time trying to get through the rest of this.

Let me just ask one question not focused on the cleanups and the dangers, but rather on the avoidance of spills and accidents in the first place. There are a number of proposals that are suggesting that we could put more responsibility on the shippers to be sure that responsible carriers, and particularly I am talking now about trucks, with satisfactory Department of Transportation ratings are chosen in the first place.

Now I am told that you evaluate the carriers as satisfactory, conditional, or unsatisfactory. What we are saying is that maybe there should be an incentive for shippers to choose safer carriers, and we will just let the market start to work this out, instead of government regulations. If carriers with unsatisfactory ratings or carriers with conditional ratings for a period of time who have not been able to get their rating back up were used, we would start to shift some of the liability, to shippers possibly 50 percent of the cost of the damages.

I sense that this would be a market solution, first of all, but it might also add a positive self-policing aspect to HAZMAT shipments. I am aware of the support of this proposal by tank truck operators, by other trucking groups, and I am aware also of concerns of others.

Could you comment on this proposal, which I believe makes a lot of sense?

Mr. DUNGAN. And this is actually making the shippers more responsible than the carriers?

Senator KASTEN. This assumes also that you could go ahead and rate all the groups. And I understand the trucking industry being as fragmented as it is, we would have to go with the ratings. But what we are saying is that if a shipper chose a trucker with a conditional or an unsatisfactory rating, that shipper would be liable for a percentage, and let us say 50 percent, of the costs and the damages if an accident occurred.

Mr. DUNGAN. I guess I would want to make sure that the safety rating system we were using was appropriate for that purpose. I am not that familiar with the federal highway system, but I do not believe that particular system would be the appropriate one to accomplish what you are proposing. That is, it is a complex issue, but it sounds like it is a market approach of trying to deal with avoiding problems. I think it is worthy of study.

Senator KASTEN. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Kasten.

Thank you very much, Mr. Dungan and your assistants that came with you this morning. And you are excused.

Mr. DUNGAN. Thank you.

Senator EXON. We will now call panel one to the witness table please. Mr. William A. McCurdy, Jr., Logistics & Commerce Counsel Legal Department for the du Pont organization; Mr. David B. Morgans, Director of Transportation, Occidental Chemical Compa-

ny; Mr. William Dempsey, President of the American Association of Railroads; and Ms. Lana Batts, Senior Vice President of the American Trucking Association.

Welcome to you, ladies and gentlemen. I appreciate your patience. We have obviously taken a lot of time this morning, which I think indicates the concern of this Subcommittee on this very, very important problem. And we appreciate your coming in to testify this morning and answer any questions we might have.

Let us move right along then. And I will be pleased to recognize at this time Mr. William McCurdy.

STATEMENT OF WILLIAM A. McCURDY, JR., LOGISTICS AND COMMERCE COUNSEL LEGAL DEPARTMENT, E.I. du PONT de NEMOURS & CO., WILMINGTON, DE, ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. McCURDY. Good morning, Chairman Exon and Senators. It is an honor and pleasure to be here. My name is Bill McCurdy. I am Logistics and Commerce Counsel for E.I. du Pont de Nemours & Company. I appear today in my capacity as Chairman of the Safety Environment and Energy Issues Committee of the National Industrial Transportation League.

In the interest of time and in order to provide each Member with an opportunity to resolve any open issues he may have, I plan to present only a summary of the League's written testimony. Copies of the full statement have been provided to staff——

Senator EXON. Let me interrupt you, Mr. McCurdy, at this time. I should have done this earlier. We are pleased to accept all of the written testimony submitted in advance by this and other panels, and it will be placed in the record at an appropriate point without objection.

Thank you.

Mr. McCURDY. Thank you.

The League's commitment to the environment, transportation safety and the economic well-being of the United States and health of its citizens has been amply demonstrated through the years by the League's past performance and by its published policies. In 1974 the League fully supported and actively worked for the passage of the Hazardous Materials Transportation Act of that year.

The 1974 Act has worked well. The Department of Transportation statistics indicate that well over 99 percent of the bulk and packaged domestic shipments of regulated materials have reached their destinations without incident. The National Transportation Safety Board reports that hazardous materials safety incidents, deaths and injuries have steadily declined since 1980. By nearly every measure, hazardous materials transportation safety is well in hand.

As well as the 1974 Act has performed, however, improvement is possible and, in the judgment of the League, due. Comprehensive legislative proposals pending in the House, including H.R. 3520 and the draft proposal of the Surface Transportation Subcommittee of the House Public Works and Transportation Committee are positive steps in that direction.

Senator EXON. Would you pull the microphone up just a little bit, Mr. McCurdy? We have a roomful of people, and I am not sure this is reaching to the back. Thank you. I would ask the others to please do likewise.

Mr. MCCURDY. Is that better now?

Senator EXON. That is better.

Mr. MCCURDY. These proposals deal with several major issues outlined in the League's written testimony. These include: uniform national regulation of hazardous materials transportation; enforcement; emergency response; funding; permitting; international representation; and S. 2318 as well as its companion legislation, H.R. 2584. I will take a minute to address just some of these issues.

Uniform national regulation: The League strongly supports the concept of a single, clear, simple and uniform system of regulation of hazardous materials transportation. Such a system should be based on safety and an efficient and effective use of this Nation's resources.

Since 1974 a matrix of Federal, State and local regulations has developed, resulting in a system that is fragmented, confusing, expensive and inefficient. The original goal of safety has been compromised in far too many instances.

The League and its members urge this committee and Congress to return to a single published system of regulation that is simple, clear and focused on safety. State and local government, industry, environmental groups and other affected parties' views should be heard and addressed; however, the Federal Government, through the Department of Transportation, should be the final arbiter.

A balance based on safety must be struck. One possible means for achieving this balance would involve the establishment of Federal criteria to be used in an accelerated screening process of proposed local and State laws affecting transportation of regulated materials. Local and State proposals which were found to further safety and satisfy these Federal criteria would be incorporated into the Federal regulatory system.

Such a system would be designed to:

Ensure that the views of all affected views were considered;

Make the protection of the environment and all affected citizens a principal concern;

Assure that local proposals are consistent and compatible with Federal regulation and that all parties are afforded an opportunity, ahead of time, to know what regulations they must comply with.

The second major issue I would like to address involves enforcement. The League believes that effective and targeted enforcement of uniform Federal regulations by knowledgeable, well-trained officials is the most efficient way to prevent hazardous materials incidents. Enforcement, to be effective, should concentrate its efforts where the most significant risks exist.

Results of investigations and inspections should be screened by a central body, the FRA in the case of railroads and an central screening agency within each state for other modes, to insure that only viable citations emerge. This will insure fairness and uniformity of treatment and will elevate the impact of the report violations.

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Emergency response: The League strongly supports addressing the issue of emergency response planning and preparedness. Such planning, however, must be based on demonstrated need and documented facts. The scope of this need and required facts should be determined through a comprehensive study conducted by the states under Federal criteria and reported in a timely manner.

The results of these studies could be used to establish a comprehensive and well-managed network of regional emergency response teams. These teams would overlap and create a seamless network of coverage. Team members would be trained to meet standards published by OSHA and the National Fire Protection Agency. Teams themselves could be public, private or obtained under contract. Private industry teams should be encouraged to become voluntary parts of the system. This could be accomplished by reimbursing out-of-pocket expenses and passing a Federal good samaritan law.

Examples of such systems exist now and can be found in Virginia, Michigan, Tennessee and elsewhere.

Transportation regulation is not confined to domestic markets alone. Regulated materials also move in international trade in a working global marketplace. The League believes that U.S. participation in international standard-setting bodies is essential if our economy is to remain competitive. We urge Congress to designate the Department of Transportation as the official government representative in these forums and to provide the necessary resources to insure that the interest of this country's citizens are protected.

Finally, I would like to address S. 2318 and its companion legislation, H.R. 2584. Proponents of this legislation have indicated that the current emergency response system of placards and shipping papers coupled with the industry-sponsored CHEMTREC system does not adequately protect the public and emergency response personnel.

The League and its fellow industry associations acknowledge the current system is not perfect. It, like all systems, can be improved. The proposed data base, however, and central computer system proposed under S. 2318 is not the answer. The system is designed to provide emergency response information to responders when the contents of the vehicle or container are unknown.

To accomplish this, the information would have to be correctly entered into the central data base at the time the material is shipped or transferred between containers or modes. The responder, utilizing on-the-scene portable computers, would access this information using a unique identifying characteristic of the container such as its license plate number.

The League believes that such a system would not be as effective as the current system, would be prohibitively expensive and would not save lives. The Department of Transportation has indicated that it has found no record of any hazardous materials incident where lives were lost and such lives would have been saved based on the proposed system.

Statistics and figures are also presented in a letter that has been sent to various Members of Congress by the Department of Transportation, and I am not going to repeat those figures here other than to say that the Department has indicated that 280 million

keystrokes would be required to implement this system each day. Clearly in our judgment, there is a greater chance for error in those keystrokes than there is in the current system today.

I would be happy to answer any questions you all may have.

[The statement follows:]

STATEMENT OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Chairman Exon, Members of the Subccmmittee:

My name is William A. McCurdy, Jr. and I am the Logistics and Commerce Counsel for E.I. du Pont de Nemours and Company. I appear today in my capacity as chairman of the Safety, Environmental and Energy Issues Committee of The National Industrial Transportation League.

The National Industrial Transportation League is the nation's oldest and largest shippers' transportation trade association. It represents shippers of all sizes who manufacture and distribute a full range of commodities using all modes of transportation to move their goods in domestic and international commerce. Its members, directly or indirectly, are responsible for routing about 80 percent of the nation's commercial freight.

The League's commitment to the environment, safety, the economic well-being of the United States, and the health of its citizens has been amply demonstrated by its past involvement in legislative and regulatory processes, by its active participation in current efforts to enact strengthened hazardous materials legislation and regulation, and by its publication and adherence to transportation policies which emphasize the safe handling and transport of hazardous materials. A copy of the League's policies is attached to this testimony.

The League supported enactment of the 1974 Hazardous Materials Transportation Act, and believes that, in general, the Act has worked well. Statistics, reported by the Department of Transportation, indicate that well over 99 percent of the bulk and packaged domestic shipments of regulated materials reach their intended destination without incident. The National Transportation Safety Board reports that hazardous material safety incidents, deaths, and injuries have steadily declined since 1980. This is despite the fact that more hazardous materials are shipped every year. By nearly every measure, hazardous materials transportation is safer than ever before.

As well as the 1974 Act has worked, the League believes that many of its provisions are showing signs of age and should be revised or replaced. Current comprehensive legislative proposals pending in the House, H.R. 3520 and the draft legislation under consideration by the Surface Transportation Subcommittee of the Public Works and Transportation Committee, represent positive steps in this much needed effort. The League believes that, with some modification, these efforts could form the basis for an improved and more efficient system of hazardous materials regulation.

UNIFORM NATIONAL REGULATION

The League strongly supports the concept of a single, uniform system of regulation and hazardous materials transportation. Such a system is necessary if the current fine safety record is to be improved, and if we, as an industrial nation, are to remain competitive within the emerging global marketplace.

Since the 1974 Act became law, a matrix of federal, state, and local laws and regulations have evolved. These laws and regulations often are complex, misdirected in their application, obscure in their meaning, adverse in their impact on safety, needlessly expensive, and difficult to discover. Often they seek to "export" risk to adjoining jurisdictions without regard to the overall impact on the safety of the affected populations.

State and local regulations which take these commodities off the interstate highway system, and put them on poorly maintained secondary roads, not only improperly interfere with interstate commerce, they also substantially increase the risk of incident. Prenotification, curfews, special speed limits, permit and escort requirements all have been used by local governments to discourge hazardous materials transportation through their jurisdictions. Rather than promote safety, such restrictions have drained the resources of shippers, carriers, and the Department of Transportation through needless inconsistency hearings (see 54 Federal Register 3177 et seq. - Docket No. IRA-46).

The League believes that Congress should indicate clearly that the regulation of hazardous materials transportation is within the sole and exclusive province of the federal government as implemented by the Department of Transportation through its regulatory process.

The views of state and local governments, as well as that of industry, should be solicited, weighed, and considered in this process. However, the final arbiter should be the Department of Transportation.

One possible method for balancing the legitimate safety concerns of local and state governments with the need for uniformity would involve the establishment of federal criteria to be used in an accelerated screening process of proposed local and state laws affecting the transportation of regulated materials. Local and state proposals which were found to further safety and satisfy the published federal criteria would be incorporated into the federal regulatory system. Such a system would be designed to:

1) ensure that the views of all affected persons were considered;

2) make the protection of the environment and all affected citizens a principal concern;

3) assure that local proposals are consistent and compatible with federal regulation;

4) afford affected parties an opportunity to become familiar with the local regulations and have an opportunity to comply with them before being cited; and,

5) prevent the nation's commerce from becoming unreasonably burdened or curtailed.

3

ENFORCEMENT

The League believes that effective and targeted enforcement of uniform, federal regulations by knowledgeable, well-trained officials is the most efficient way to prevent hazardous materials incidents. Experience has demonstrated that cooperative federal/state efforts such as those undertaken in the highly successful Motor Carrier Safety Assistance Programs, are very effective and greatly reduce the potential for incidents.

The League also believes that enforcement resources should be concentrated where they can be most effective. Citations for hand-tightened bolts on empty tank cars or for placards which are placed at the wrong angle on a truck body do not represent the best use of limited enforcement resources.

Further, the League recommends that citations be filtered through a central screening process within each state for highway violations and within the Federal Railroad Administration for rail-related matters. This will ensure uniformity of treatment and elevate the impact of the reported violation upon the citation recipient.

EMERGENCY RESPONSE

The League strongly supports addressing the issue of emergency response planning and preparedness. Comprehensive planning which integrates fixed facility concerns with those of transportation should be conducted by existing State Emergency Response Committees authorized under Title III of SARA or some other similarly positioned central planning body. Planning should be preceded by a needs assessment conducted by the planning body utilizing federally established guidelines.

The League believes that public interest would be served best by the establishment of a comprehensive and well-managed national system. This system would consist of state identified, professionally trained and qualified, regional hazardous materials response teams. These teams would be capable of cooperating with industry in a timely and efficient manner and of responding to both fixed facility and in-transit incidents.

Ideally, these teams would be organized and positioned to avoid needless overlap and ensure "seamless" coverage across the nation. Using DOT established guidelines, the states would create regions based on criteria such as population, location of manufacturing facilities, transportation routes and modes, predominant regulated materials present, topography, critical natural resources, and desired response times.

The teams would be comprised of the most technically competent and highly trained personnel available. States would be free to maintain their own teams, use qualified, volunteer private sector (industry) teams, or contract with private entities for these services.

Good samaritan laws which reduce liability for simple negligence and programs which reimburse out-of-pocket expenses for existing, qualified, volunteer teams from private industry should be encouraged.

Each team member would be required to meet the training standards set by the National Fire Protection Association and OSHA for the highest level responder -- hazardous material specialist. The teams should have and be properly trained to use the equipment needed to respond to fixed facility and in-transit incidents. They also would be available to assist in training regional first responders such as police and fire fighters.

Inexpensive video and electronic training aids should be developed and made available for use by local police and fire companies. Regional team members and related industry trade associations could be recruited to help develop these aids.

Regional response programs already exist or are being implemented in several states including Virginia, Michigan, and Tennessee. These states' experiences should be used in constructing model teams when DOT responds to any Congressional mandate.

EMERGENCY RESPONSE FUNDING

The House reauthorization proposals have used registration as a mechanism to raise funds to cover the anticipated costs of enforcement, planning, and maintaining emergency response teams. The Department of Transportation has opposed registration as a funding mechanism because DOT believes it to be inefficient. The League supports the views of the Department in this regard.

The League also believes that establishing a mechanism for raising funds to cover costs of increased enforcement and emergency response teams before the scope of those costs are known is counterproductive. Funding for emergency response teams and increased enforcement should be addressed only after a needs assessment has been conducted to measure the actual financial requirements necessary to provide the required services.

If a funding mechanism is to be included, the League believes that it should be broad-based and include all of those who are affected by or benefit from improved emergency response and planning. Fixed facilities and the consuming public should contribute to the fund, either directly or through the general treasury.

PERMITTING

The League supports a safety-oriented carrier permit program for those transporting highly hazardous commodities such as Class A and B explosives, materials that become poisonous upon inhalation, highway route controlled quantities of radioactive material, and other similar commodities as may be designated by the Secretary of Transportation. The League believes that transporters of these goods should be subject to more stringent safety fitness and training requirements, and that such a program will help bolster public confidence in the industry's ability to safely transport these materials.

The League endorses the appproach reflected in Section 6 of the June 12 Preliminary Staff Working Draft of the Public Works and Transportation Committee.

INTERNATIONAL REPRESENTATION

The League believes that U.S. participation in international standard-setting bodies is essential if our economy is to remain competitive in domestic and international commerce. It also believes that the DOT should be empowered to represent U.S. interests in the international forums which govern the transport of hazardous or dangerous goods, and should be given the necessary resources for effective participation.

H.R. 2584 and S. 2318

H.R. 2584, and its companion measure, S. 2318, would mandate the use of a central, as yet untried, computer system to track the movement of regulated materials and record information for use in the event a transportation emergency involving hazardous materials occurs. Proponents contend that the proposed system will cure the deficiencies of the current emergency response process and save the lives of emergency responders.

Proponents claim that the current emergency response system will not work if shipping papers, which are required to accompany all shipments, are not present, and placards, which the law requires displayed on all hazardous material vehicles, are damaged, destroyed, or unreadable. They further claim that since the central computer system will not depend on the presence of the shipping papers or the placards, it will be superior to the current system.

However, proponents fail to demonstrate that the presence of a computer database will save lives. The DOT has found no record of any hazardous material transportation accident where lives could have been saved by a computer database such as proposed in this bill.

DOT also estimates that implementation of this system would require its user to enter 280 million key strokes per day. It is unrealistic to assume that no errors will be made. In fact, there is a greater chance of erroneous information being inadvertently supplied to the emergency responders under the proposed system, than shipping papers and placards not being available to him under the current one.

Another major concern is cost. The DOT has estimated that the cost to business and industry of this system will approximate $12.3 billion annually. In addition, DOT estimates that the federal government will experience a loss of tax revenue of $3.7 billion and a direct expense of $30 million for registering its own shipments. The cost in terms of loss of market and competitiveness for American goods abroad must also be weighed.

The League believes that the current emergency response system can be improved. However, it does not believe that H.R. 2584 or S. 2318 is the appropriate vehicle to accomplish that improvement.

In conclusion the League believes the time has come for Congress to update the Hazardous Materials Transportation Act in a way that enhances the safe and efficient movement of these important, but potentially dangerous, commodities. The keys to this system lie in promoting prevention, enforcement, and a uniform system of regulatory requirements. In our efforts to improve emergency response capabilities, attention should be focused on generating the needed planning information, improving coordination between public and private sector resources, and assuring the most efficient use of our revenue dollars.

The League appreciates this opportunity to present the views of the shipper community. It looks forward to working with you and your staff in updating the laws governing the transportation of our nation's hazardous materials. I would be happy to answer any questions you may have.

Senator EXON. Thank you, Mr. McCurdy. I take it that your testimony would indicate that at least you feel that this is one problem of mankind that cannot necessarily, in and of itself, be satisfied by the computer. That is a pretty startling testimony.

I have never heard anything like that before, but that is what you are testifying to?

Mr. MCCURDY. In essence, yes, sir.

Senator EXON. Thank you. Mr. Morgans.

STATEMENT OF DAVID D. MORGANS, DIRECTOR OF TRANSPORTATION, OCCIDENTAL CHEMICAL CO., DALLAS, TX

Mr. MORGANS. Good morning. My name is Dave Morgans. I am Director of Transportation of the Occidental Chemical Corporation. I am here representing the Chemical Manufacturers Association in my capacity as chairman of the CMA's Hazardous Material Transportation Task Group. CMA appreciates this opportunity to appear before the Surface Transportation Subcommittee.

CMA is a non-profit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. Our members are actively involved in the distribution of chemicals, including hazardous materials, throughout the world. As such, we have a keen interest in the HMTA re-authorization process. I am providing you with an overview of CMA's position in those areas where CMA believes amendments to the HMTA are needed. We have submitted a more detailed written comment for the record.

At the outset, I wish to stress that CMA supports amending the Hazardous Material Transportation Act in this session of Congress. HMTA has served the Nation well, but improvements are needed. CMA supports Congressional action to define the roles of Federal and state government in regulating the transportation of HAZMATs. We agree with the steps being taken in the House of Representatives to identify those areas where Federal and state regulations must be the same. This will enhance overall HAZMAT transportation safety, and will ensure that chemicals are moved efficiently.

CMA agrees that the Nation's emergency system for responding to releases of chemicals needs improvement. We support the concept that has been applied in several states of establishing a coordinated system consisting of a network of regional emergency response teams. This system ensures total statewide coverage and addresses the training deficiencies raised by the Office of Technology Assessment.

CMA believes that the states have a central role in identification of the routes used for the movement of hazardous materials. However, in identifying those routes states should apply guidelines established by the DOT.

CMA opposes legislation that would establish a computerized national hazardous materials identification system, such as in S. 2318. Such a system would impose significant economic burdens on the HAZMAT shipping and carrier industries without providing a demonstrated benefit. We agree with the recent letter from the DOT to the Chairman of the House Public Works and Transportation Com-

mittee, which raises serious questions about the feasibility and advisability of such a system. We also agree with the recent report of the Energy and Commerce Committee on H.R. 3520, which states that "it is premature to mandate the adoption of a particular technology until a complete assessment of all alternatives, including computer and satellite capabilities, is fully developed."

CMA supports the establishment of a Federal registration system for those industries that are involved in the hazardous material and transportation business, provided that the registration program has a clear safety-related purpose, and that the state and local registration programs are preempted. CMA also supports a safety permit program for carriers that are involved in the transportation of materials determined by the DOT to require the highest level of control.

State and Federal agencies have a vital role in promoting the safe transportation of HAZMATs through sound, consistent regulations and effective enforcement. But they are only a part of the picture. The industries involved in the transportation of HAZMATs—shippers, carriers and equipment manufacturers—also have a critical responsibility to improve their safety performance. Although we think the HAZMAT transportation safety record is exemplary, the industry should not allow itself to be satisfied with the status quo. We must continually evaluate current practices and strive to find ways to improve the safe and efficient transportation of chemicals.

CMA is involved in a number of such efforts. For example, working together through a senior management task force, the chemical, railroad and tank car manufacturing industries have developed and are implementing a series of industry recommendations that will contribute to improved safety.

The chemical industry, through the CMA, also continues to furnish the emergency response community with resources, chemical information, and top-quality training programs. CMA has successfully managed the chemical transportation emergency center, known as CHEMTREC, for 19 years. This center has provided continuous assistance to the emergency response community over that time. In addition, CMA's lending library of emergency response training programs has been used by over half a million emergency responders. The chemical industry is proud of its efforts in working with the allied industries and all levels of government to make hazardous materials transportation a safer activity.

That concludes my statement. I am pleased to respond to any questions you might have.

[The statement and questions and answers follow:]

WRITTEN STATEMENT
ON
BEHALF OF THE
CHEMICAL MANUFACTURERS ASSOCIATION

The Chemical Manufacturers Association (CMA) appreciates the opportunity to set forth the chemical industry's views on the reauthorization of the Hazardous Materials Transportation Act (HMTA). As we testified before this Subcommittee on April 24, 1987, CMA believes that the existing HMTA has served the public and industry well in establishing the framework for a safe hazardous materials transportation system. However, we believe there are further improvements that can and should be made to the HMTA that will lead to even greater transportation safety. Because many of these legislative improvements are overdue, CMA encourages Congress to pass a comprehensive HMTA reauthorization law this legislative session.

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. In 1989, the U.S. chemical industry employed 1 million people domestically and had a positive trade balance of $15.7 billion. Transportation is the essential link between chemical manufacturers and their suppliers and customers.

The safe transportation of these materials is of paramount importance to the chemical industry. It is for this reason that CMA has been a principal proponent of building upon the existing HMTA to further strengthen the controls over the transportation of hazardous

materials. This is also why the chemical industry has embarked on a number of major initiatives that will enhance transportation safety and emergency response.

ROLES OF FEDERAL STATE AND LOCAL GOVERNMENTS

Clarification of the roles of federal, state and local governments in regulating the movement of hazardous materials should be one of the most important objectives of any amendments to the HMTA. Because of the interstate nature of these activities, CMA believes it is essential for the Act to define clearly the roles of each level of government. Under the existing provisions of the HMTA, Congress has declared its policy that the Secretary of Transportation should develop a regulatory and enforcement program to protect the nation adequately against the risks to life and property inherent in the transportation of hazardous materials. Additionally, the HMTA establishes a process whereby DOT can determine if a state or local law is preempted by the HMTA or the regulations established to enforce it.

What the existing HMTA fails to do is to define those regulatory areas where national uniformity is required. At present, there is a proliferation of differing state and local regulations concerning all aspects of hazardous materials transportation. It is sometimes difficult just to learn about, much less comply with, these conflicting state and local requirements. This problem is compounded by the lack of an efficient process to determine whether such local regulations are inconsistent with, and therefore preempted by, the federal regulations.

CMA believes it is critically important for DOT to have the primary authority to regulate hazardous materials transportation safety, and that the scope of that authority be clearly defined. The HMTA should specify the areas where DOT has sole responsibility for the

development of regulations. These areas should, at a minimum, include packaging, the designation and classification of hazardous materials, incident reporting, notification of the movement of hazardous materials, shipping documentation, labelling, placarding, and licensing.

This is not to suggest that there is no room for state and local governments to control the safe movement of hazardous materials. Certainly, there are important areas where state and local government should contribute. Enforcement of the federal hazardous materials regulations is a major area where state and local governments can provide assistance. It is widely recognized that, while federal enforcement efforts have improved significantly over the past decade, more can be done. State and local enforcement of the federal requirements will help to supplement federal enforcement, and will lead to further improvements in the control of hazardous materials transportation.

However, consistency of enforcement at the federal and state level is extremely important. Inconsistencies in the interpretations of the federal requirements only result in confusion and detract from safety. On highway shipments, the Department of Transportation has done an outstanding job in working with state enforcement personnel. Through the Cooperative Hazardous Materials Enforcement Development Program (COHMED), DOT and the states are working together to improve enforcement of the federal hazardous materials transportation regulations.

In the rail area, CMA believes that the existing federal enforcement capacity needs to be strengthened. We support the position that state enforcement personnel should be a player in this arena. However, we are concerned, as are the railroads, that allowing states

to enforce the federal regulations could lead to inconsistencies in the application of those regulations, including the level of fines. Despite the efforts of DOT through COHMED, such inconsistencies still remain a problem in the highway mode. For this reason, we believe that in the area of rail regulatory enforcement the role of the states should be to inspect for violations, with any final enforcement action coming through the Federal Railroad Administration. This will address the concerns that have been raised over both the limited number of federal enforcement personnel, and the inconsistencies in state application of the federal regulations.

Another important role for states is in identifying routes that should be used for the highway movement of certain hazardous materials. In order to ensure that a consistent and comprehensive national routing system is developed, CMA believes it is essential for states to apply federal routing standards to identify highway routes. Without federal standards, states could develop routing systems based on widely different safety criteria. In addition, should a dispute between neighboring states arise, the federal government should act as the arbitrator. Also, we believe it would be very useful for the national routing system to be published on a routine basis. New routes identified by the states should not be effective until they are published in this "official" guide. In this way the regulated community would have a ready reference for planning the movement of affected shipments of hazardous materials.

EMERGENCY RESPONSE TRAINING AND PREPAREDNESS

When CMA last testified before the Subcommittee on Surface Transportation, we noted that it is essential that emergency responders be properly trained to deal with hazardous materials releases. This

position is unchanged. We also noted in 1987 that there was little coordination of hazardous materials emergency response training efforts, and as a result not much is known about the extent of training needed and where these efforts should be directed. At that time there was not even an agreement on the issues that should be addressed in emergency response training. The report released by the Office of Technology Assessment in 1986 underscored these problems.

Since the Subcommittee's 1987 hearings, there has been considerable progress made in the area of hazardous materials emergency response training. However, CMA believes more can be done.

The first major development is that training standards have been developed by the National Fire Protection Association. These standards recognize that not all emergency responders must be trained to be hazardous materials response specialists. The NFPA standards provide training standards for four levels of emergency responders. Responders will receive training that is in line with their function in a hazardous materials emergency.

The second major development is that some states have already advanced programs that are designed to facilitate state-wide coverage to respond to releases of hazardous materials. CMA is very supportive of the efforts taken by these states. They provide a coordinated method of establishing an effective hazardous materials emergency response program.

For example, the State of Virginia has instituted such a program. State emergency preparedness officials, working in conjunction with industry, set out in 1986 to assess their major exposures and their existing emergency response capabilities. Through this assessment Virginia officials identified the hazardous materials transportation

corridors and the location of the major production and storage facilities. They were also able to identify several highly qualified and equipped hazardous materials emergency response teams. Matching this information, the state developed a network of regional hazardous materials emergency response teams. This system provided assurance that the entire state is covered in the most efficient manner. It eliminated the need for neighboring jurisdictions to duplicate efforts. In several situations municipal teams became regional response teams. By broadening the area of response and coordinating the teams' activities at the state level a comprehensive response capability was established.

The Virginia plan also addresses the training issue raised in the OTA Report. The regional team members receive the highest level of training provided in the NFPA standards. These team members, in conjunction with state personnel, carry out basic first responder training for local fire departments throughout their regions. This coordinated approach ensures that appropriate training is made available to all of the state's emergency responders.

Similar efforts have been pursued in varying degrees in Tennessee, Minnesota, Michigan and Oregon. CMA applauds these state initiatives, and recommends that the HMTA be amended to call upon other states to establish similar emergency management systems. The basis for much of this has been already developed through the initiatives under Title III of the Superfund Amendments and Reauthorization Act of 1986.

HAZARDOUS MATERIALS IDENTIFICATION

CMA joins the Department of Transportation and the House Energy and Commerce Committee in opposing the central computer identification system proposed in S.2318 and H.R. 2584. We do not believe this system

will provide emergency responders with useful information about the contents of vehicles transporting hazardous materials while it would impose excessive costs on industry. Further, we believe reliance on the proposed system could result in avoidable injuries, and even loss of lives. Rather than repeat all of the deficiencies that have been found with such a system, we refer the Subcommittee to the House Energy and Commerce Committee's report language on H.R. 3520, the Department of Transportation's recent letter to the Honorable Glenn Anderson, Chairman of the House Public Works and Transportation Committee, and the March 28, 1990, joint letter signed by twenty-one trade associations, including CMA, to the Honorable Norman Mineta, Chairman of the Surface Transportation Subcommittee of the House Public Works and Transportation Committee. A copy of that joint letter is attached.

As an alternative, CMA believes that Congress should call for a one-year study of hazardous materials identification issues, including the adequacy of current systems and possible improvements to those systems.

REGISTRATION AND PERMITTING

CMA believes registration and permitting should be exclusively federal. Registration for registration's sake contributes little to the safe transportation of hazardous materials. If done at the state or local level, such registration would be extremely burdensome to all parties involved in the transportation of hazardous materials. If Congress opts for a mandatory hazardous materials registration program, CMA believes that such a program should have a clear safety purpose and should preempt the establishment of state and local registration programs.

With respect to permitting, CMA supports the establishment of a federal safety permit program for carriers that transport Class A and B explosives, materials that are poisonous by inhalation, highway route controlled quantities of radioactive materials, or such other materials as may be designated by the Secretary of DOT. Carriers that transport such potentially hazardous materials should be subject to heightened safety fitness requirements. CMA believes that such a safety-based permit program would contribute greatly to safety and would augment the chemical industry's efforts to promote carrier safety programs. It is appropriate for Congress to require DOT to administer the safety permit program, and to expressly preempt state permit schemes, because of the interstate nature of much of the transportation of these materials and the need for uniform standards.

INDUSTRY INITIATIVES

The chemical industry is committed to transportation safety and to effective emergency response to hazardous materials incidents. To this end, CMA has joined with the transportation community in developing a number of initiatives designed to improve hazardous materials transportation safety. Our efforts on the highway side have led to the development of a motor carrier safety survey, which helps shippers, on an individual basis, evaluate motor carrier safety programs.

In the rail transportation area, CMA, the Association of American Railroads and the Railway Progress Institute have established the Interindustry Rail Safety Task Force. This Task Force represents a top level commitment by shippers, rail carriers and rail car manufacturers to improving industry safeguards to protect against unintentional releases of hazardous materials moving by rail. Transportation risk management, improved railroad and shipper operating practices, and

product identification and emergency response are the key areas being addresses by the Task Force.

Further, CMA, along with representatives of the emergency services, motor carriers, railroads, marine carriers, and chemical distributors are developing a community outreach program known as TRANSCAER. This program will help industry and community officials along major transportation routes to develop and coordinate comprehensive emergency response contingency plans. Resources are being developed in cooperation with DOT that will better prepare communities to deal with releases of hazardous materials. The process has been effectively field tested in communities in New Jersey, Michigan and Texas. Efforts such as TRANSCAER demonstrate the industry's commitment to work as partners with community officials and emergency responders.

Also, since 1971, CMA has operated the Chemical Transportation Emergency Response Center, or CHEMTREC, to provide technical information and actual response assistance during hazardous materials emergencies. CHEMTREC is a 24-hour emergency response service available to fire services, law enforcement personnel, manufacturers, shippers and carriers. The wide range of proven services provided by CHEMTREC can best be summarized through three critical functions:

- CHEMTREC provides immediate response information on the products involved in an incident, through a database of more than 500,000 product Material Safety Data Sheets provided to CHEMTREC by the manufacturers of these products.
- CHEMTREC immediately contacts shippers and carriers to involve them directly in the emergency response. This is accomplished through 24-hour contacts that CHEMTREC maintains with over 5,700

companies involved in the transportation of hazardous materials. CHEMTREC has the communications capability to link product, medical, and equipment experts from the shipper, manufacturer, carrier and government directly with on-scene responders.

o CHEMTREC can activate a nationwide network of over 200 industry and 50 contractor emergency response teams to mobilize industry expertise and provide on-scene assistance.

A detailed listing of the many services provided by CHEMTREC is attached to this statement.

These services go far beyond those of an answering service or computer database because they provide two elements critical to effective emergency response -- industry expertise on the products and shipments in question, and rapid networking of emergency response personnel. CHEMTREC's services are provided at no cost to emergency responders, transportation companies or local communities.

The concern has been expressed that CHEMTREC's effectiveness is limited without information on product identity. In fact, CHEMTREC's direct and immediate access to both manufacturers and transporters, its extensive MSDS repository and its expertise in identification and marking systems are valuable, proven resources in identifying products being shipped. CHEMTREC is not itself a product identification system; however, based on CHEMTREC's 19 years of experience in helping emergency responders, CMA believes that tracking every hazardous materials shipment is impractical and unworkable, and would yield no greater assurance of product identification than exists today. Resources should instead be focused on better enforcement of existing identification regulations, i.e., placarding, package marking and labeling, and shipping documentation. In addition, training and education in the

proper use and recognition of current systems will enhance response capabilities.

Because the initial response to an accident is critical to ensure that the public and the environment are protected, the chemical industry has also developed training materials for first responders. Since 1985, over 500,000 emergency responders have taken advantage of the information provided by CMA through these programs.

CMA has produced five comprehensive training videotapes for emergency responders, and has developed a lending library of training programs. Programs included in this lending library cover, among other areas, initial response techniques, how to properly respond to specific chemicals such as chlorine, liquified petroleum gases, phosphorus, gasoline, and sulfuric acid, to name a few. The Lending Library also includes training videos on effective preplanning.

The video programs produced by CMA are designed to address the training needs of first responders. They have been developed on consultation with the emergency response community. These programs cover the proper methods for identifying chemicals involved in an accident, and how to approach an accident to maximize safety. The videos also address how to coordinate a team response to an accident and how to use the DOT Emergency Response Guidebook. Additionally, CMA has developed two videos addressing the properties and response techniques to releases of poisons and oxidizers. These training tapes have been widely circulated and recognized by the National Fire Academy for their contribution to emergency responder training.

CONCLUSION

CMA believes that improved coordination is needed among federal, state and local authorities in developing and enforcing a nationally uniform hazardous materials transportation regulatory system. DOT should be given greater authority to determine whether local requirements are preempted by federal regulations.

CMA also endorses the establishment of a comprehensive national emergency response system, consisting of state-identified regional response teams. DOT should develop guidelines for the states to use in developing their regional response networks. Further, DOT should be required to institute a safety permit program for carriers that transport especially hazardous materials.

The chemical industry has demonstrated its commitment to improve the safety of hazardous materials transportation, and to provide assistance to responders at accidents involving those materials. Through our interindustry initiatives and such programs as CHEMTREC and TRANSCAER, the chemical industry will continue its leadership role in transportation safety and effective emergency response.

HAZARDOUS MATERIALS TRANSPORTATION HEARING 07-25-90
FOLLOW-UP QUESTIONS FOR THE CHEMICAL MANUFACTURERS ASSOCIATION

Computer Tracking

Two pending measures, H.R. 2584, introduced by Congressman Applegate, and S. 2318, introduced by Senator Metzenbaum, would require the establishment and use of a national computer system to register the movement of all hazardous materials. Would any of you care to comment further on the need and costs associated with these proposals?

As we state on pages six and seven of CMA's written statement, CMA is opposed to the central computer identification system proposed in S. 2318 and H.R. 2584 for hazardous materials in transportation. The system would impose an extremely large burden, both in terms of filing manifests and financial costs, on shippers without providing any demonstrated benefit to emergency responders. Estimates for the cost of compliance with this proposed legislation are a minimum of $2.1 billion per year.

In fact, we believe the system proposed by H.R. 2584 and S. 2318 may result in less accurate information for emergency responders. The Department of Transportation estimates the massive computer system will need a minimum of 280,000,000 keystrokes per day to process all of the information. Any system requiring that many keystrokes will have incorrect information included due to human error.

One aspect of the system that also must be considered is that a great deal of proprietary information will be entered in the computer. To protect the confidential nature of this information, it will have to be entered into the system in code. The information will then be transmitted to the emergency responders in code which will have to be interpreted by them. This will increase the chance of human error which could result in injury to or death of the emergency responders.

CMA is committed to providing accurate and timely information to emergency responders in the event of a hazardous materials incident. However, we do not support the approach of the proposed untested and likely unworkable computer identification system. We concur with the assessment of the House of Representatives Committee on Energy and Commerce. They stated in their report on H.R. 3520, "The Committee believes it is premature to mandate the adoption of a particular technology until a complete assessment of all alternatives, including computer and satellite capabilities, is fully developed. Moreover, in view of the substantial research and development efforts now underway in the private sector to develop these various technologies, the Committee seriously questions the propriety of directing a Federal agency to enter into what would undoubtedly be a very lucrative contract with one particular private entity, whose technology may prove to be outmoded before the ink on the contract is dry."(House Report 101-444, page 24)

The letter attached to the back of our written testimony signed by twenty-one trade associations and the letter written by the Department of Transportation on H.R. 2584 raise a number of additional questions about the usefulness of this conceptual system. Additionally, the DOT notes that the system will be very expensive to the federal government. These costs result from the federal government having to file manifests with the system for all of the hazardous materials it ships by private carrier and from tax revenue lost as a result of shippers and carriers taking tax deductions for a mandated business expense.

In short, the computer identification system will not achieve the goal of providing timely information to emergency responders at the scene of hazardous materials incidents.

Federal Assistance

Other than what has been outlined in proposed legislation, how do you believe the Federal government might improve its assistance to States and localities, particularly in terms of information and resources to better respond to transportation incidents involving hazardous materials?

CMA believes that the Federal government can help states improve emergency response preparedness by assisting the states in establishing a network of regional response teams. This assistance should initially take the form of guidelines to be applied by each state in evaluating the flow of hazardous materials in the state and the state's existing response capabilities and resources. This information must by developed before the need for additional resources (including Federal funding) can be identified.

Federal Safety Permit

What are your views on the need for a Federal safety permit requirement of hazardous materials presenting a high degree of risk with the cost of maintaining such a system being born by the carriers?

CMA strongly supports the establishment of a Federal safety permit program for carriers that transport Class A and B explosives, materials that are poisonous by inhalation, highway route controlled quantities of radioactive materials, or other such materials as may be designated by the Secretary of DOT. Carriers that transport such potentially hazardous materials should be subject to heightened safety fitness requirements. Such a permit program would reflect the fact that the safe transportation of these materials is a serious responsibility and that the ability to transport such materials is a privilege. We believe further that it is appropriate that carriers pay for this privilege by contributing to the costs of the safety fitness program.

On a related subject, CMA also supports HMTA amendments that would prohibit a motor carrier with an unsatisfactory DOT safety rating from transporting hazardous materials until such carrier has received a

satisfactory or conditional safety rating. Such an amendment should also provide for the expeditious reassessment by DOT of a carrier's unsatisfactory safety rating upon the request of such carrier.

Finally, CMA wishes to address a proposal that has surfaced that would impose liability on a shipper for a hazardous materials incident caused by the carrier, if that carrier does not have a current satisfactory DOT safety rating. CMA strongly opposes such a proposal, which in our view represents bad law and bad policy.

Such a shared liability proposal is contrary to longstanding negligence principles. Under those principles, a person has a duty to exercise reasonable care, and can be held liable for harm caused by the failure to do so. Negligence principles place accountability where there is responsibility; under some circumstances this accountability may extend to harm caused by the negligence of others. By contrast, a legislatively-mandated shared liability scheme would automatically place liability on a shipper for harm caused by the negligence of a carrier. Such an arbitrary allocation of liability -- without regard to fault or control over the activity that gave rise to the harm -- would seriously and unjustifiably depart from basic negligence principles.

It is appropriate to preclude motor carriers with unsatisfactory safety ratings from transporting hazardous materials. We believe this will satisfy the intent of those who are advancing the shared liability proposal without distorting the principles of negligence.

Senator EXON. Thank you, Mr. Morgans. We appreciate your testimony.

We are now very pleased to recognize our next witness. And I want to tell you, Mr. Dempsey, that you have appeared before our Committee on so many, many occasions, and we appreciate that. There is now raging debate on this subcommittee as to whether or not you should be made an honorary member of the subcommittee.

The only thing that we unanimously are agreed upon today is, if that should happen, you would not have voting rights. I am very pleased to welcome you back.

STATEMENT OF WILLIAM DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Thank you very much, Mr. Chairman. It is always a pleasure to be here.

I will touch upon the three issues that have gotten principal attention so far this morning. I note preliminarily that as Mr. Dungan said, the record in respect of the safe transportation of hazardous materials over the last decade is very good indeed. And for the rail industry, the figures are even better than the averages that he gave. For example, we do not have an average of 11 fatalities associated each year with the transportation of hazardous materials, we have an average of zero. We have not had a single fatality associated with train accidents involving hazardous materials since 1980. I think that is perhaps the most startling figure.

You can look at safety in another way, in terms of the number of train accidents that do involve releases. There are only 44 in the last year for which data are available, and that is down more than half in the last decade.

Now the first issue that I would note is the question of preemption, which to us is far and away the most important issue involved in the whole complex of issues on this subject. As the Chairman indicated, and as Senator Specter agreed, this is a question that is basically a Federal issue. In 1970, 20 years ago when the Congress passed the Federal Rail Safety Act, it so specified, and we have had uniform regulations under that Act ever since—except for uniquely local circumstances, where appropriately, an exception is made in the statute.

Now there have been proposals and the House bill contains a measure under which the states or localities could enforce Federal regulations or could enact their own regulations identical to Federal regulations and enforce them. But this, I submit, would be an unsatisfactory approach to this problem. Inspection and citation is one thing, but enforcement is another. And that is not permitted under the Federal Rail Safety Act and should not be permitted in respect to transportation of hazardous materials.

The reason is pretty clear. These regulations are shot through with provisions that are subject to judgment. What is reasonable? What is practicable? What is sufficient? And 50 different interpretations of those regulations would be just as pernicious as 50 different regulations. This issue, indeed, as I indicated in my statement, was specifically addressed by the Congress in connection with the

1970 legislation and, for the very reason that I advanced, was rejected then, and I hope it will be rejected again.

As to the question of inspectors that—Senator Specter is an old schoolmate of mine and an old friend; I do not like to disagree with him, but I am forced to here—as to that question, the Federal regulations now require inspections of all departing trains and require that where car inspectors are available, they shall perform the inspection. But where they are not, and they are not occasionally in outlying points or in terminals when there are very few trains moving, the particular items to be inspected—such as overheated wheels and leaning cars and that sort of thing, the imminent danger items—are specified in the regulations and the train crew is required to perform the inspection. And FRA has specifically found that the train crew is quite adequately qualified to perform those inspections.

As to Congressman Applegate's testimony, I had thought that this question of Miamisburg had been laid to rest. But obviously it has not been. I would like to submit for the record a letter from CSX to Congressman Applegate dated June 6th on this matter, which contains as enclosures portions from the National Transportation Safety Board and FRA investigations. Just to give you the tone of the reports, I read from the FRA investigation these passages: "The conductor saw smoke coming from one of the cars, and using the train consist that he had brought with him, determined that the smoking car contained phosphorus." The report then goes on to relate the phone calls that he made. Four minutes after the derailment, the fire department and police departments were notified of the derailment by a resident. The report then states, "The conductor immediately informed the first police officer on the scene that the car contained phosphorus and provided him with the train consist, which listed all the cars in the train and their contents." The report goes on to say that the police requested more documents from him. He went back and got the other documents, and through these and similar papers provided by the railroad, the emergency responders learned the contents of the other derailed cars, including the sulfur car. And the conclusion was emergency response generally went well. So in this case there simply is no basis for any criticism of the existing system and certainly no support for other reasons that have been advanced by other witnesses for the imposition of this enormously costly system upon the transportation system of this country.

Thank you very much, Mr. Chairman.

[The statement and questions and answers follow:]

STATEMENT OF WILLIAM H. DEMPSEY

PRESIDENT OF THE ASSOCIATION OF AMERICAN RAILROADS

Mr. Chairman and members of the Subcommittee, on behalf of the members of the Association of American Railroads (AAR), I would like to express my appreciation for the opportunity to testify on the transportation of hazardous materials. The AAR's members welcome this opportunity to discuss the excellent safety record of the railroad industry, describe ongoing safety programs, and answer questions your Subcommittee has concerning the transportation of hazardous materials by railroad.

I. The Railroads' Safety Record

Recent years have shown a dramatic improvement in virtually every category of rail safety statistics. From 1979 to 1988, the latest year for which data are available, there was a 16 percent reduction in the number of railroad related fatalities, a 66 percent reduction in the number of railroad employee lost time injuries, and a 69 percent reduction in train accidents. Those reductions reflect the increased effort and attention railroads have been devoting to improved railroad facilities, maintenance, and other safety programs.

The railroads' efforts to improve safety in the handling of hazardous materials have also borne fruit. DOT statistics show that there have been no fatalities attributable to the release of hazardous materials in a railroad accident since 1980. In the last ten years the volume of hazardous materials moving by rail increased 20 percent--1.3 million car loads being moved in 1988. Yet, the number of accidents in 1988 resulting in releases of hazardous materials was less than half of the 1979 figure--44

versus 105. In the face of the large growth in the number of car loads moved, the number of incidents[1] has also declined--18 percent less in 1988 than in 1979.

II. The Inter-Industry Task Force

While proud of its record of transporting hazardous materials safely, the railroad industry has continued to search for ways to make the transportation of hazardous materials by rail even safer. Of particular significance is the work now being done by the "Inter-Industry Task Force on the Safe Transportation of Hazardous Materials by Rail," formed by the AAR, the Chemical Manufacturer's Association (CMA), and the Railway Progress Institute (RPI) to develop programs to improve chemical transportation safety. The Task Force, which is composed of chief executives of railroad and chemical companies and railroad suppliers, has four "working groups" scrutinizing various aspects of hazardous materials transportation by rail.

A. Railroad Operating Practices

One of those working groups, charged with examining railroad operating practices, recently made a number of recommendations which have been adopted by the AAR's Board of Directors. They are as follows.

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[1]"Incidents" encompass all unintentional releases of hazardous materials, the vast majority of which are minor leaks from valves and fittings.

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1. Key Trains

The recommended practices provide that any train with five tank car loads of a commodity designated as a poison inhalation hazard (PIH) or twenty car loads of flammable gases, PIH commodities, and Class A explosives,[2] is to be designated as a "key train." Key trains shall:

> --operate at maximum speeds of fifty miles per hour;
> --hold the main track at meeting or passing points when practicable, unless a siding or auxiliary track meets FRA Class 2 standards;
> --not contain rail cars with friction bearings (after 12/31/93);
> --be inspected for defects if the trains are stopped by an emergency brake application or by some unknown cause; if the train is stopped at a place where it cannot be inspected (e.g., a bridge), the train may be moved, conditions permitting, to the nearest place where an inspection can be conducted;
> --proceed at a maximum speed of 30 m.p.h. if a journal on a rail car is reported by a wayside detector as defective, but a visual inspection fails to show any indication of a defect; after a key train has passed by another wayside detector, and the car again activates the detector, the car must be separated from the train.

2. Key Routes

"Key routes" also have been established. Key routes are sections of track that annually handle 10,000 car loads of hazardous materials or 4,000 car loads of commodities presenting a poison inhalation hazard (PIH), flammable gases, and Class A explosives. On key routes:

> --wayside detectors designed to spot defective bearings shall be placed a maximum of forty miles apart (an equivalent level of protection may be utilized based on improvements in technology);

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[2]DOT regulations divide explosives into three classes, the most hazardous of which is class A.

--main track must be inspected by rail defect detection and track geometry inspection cars (or by an equivalent method) at least twice annually, with sidings similarly inspected at least once annually;
--any track used for meeting and passing key trains must meet the criteria for Class 2 track; if a meet or pass must occur on track of a lesser quality due to an emergency, one of the trains must be stopped while the other passes.

3. Yard Operating Practices

In rail yards, maximum effort will be made to achieve the coupling of loaded tank cars carrying hazardous materials at speeds not to exceed 4 m.p.h. In addition, loaded tank cars containing PIH commodities or flammable gases which are cut off in motion for coupling must be handled in cuts of at most two cars, and cars cut off in motion to be coupled directly to a car containing a PIH commodity or a poison gas also must be handled in cuts of at most two cars.

4. Storage of Rail Cars

The recommended practices set forth minimum separation distances between rail cars containing hazardous materials and main line track. The practices apply to storage of rail cars on railroad property and chemical company property located close to railroad main lines. The separation distances are to be applied to existing facilities to the extent practicable.

5. Training

Railroad employees, of course, are trained in all aspects of their jobs, including the handling of hazardous materials shipments. The recommended practices adopted by the AAR's Board of Directors emphasize the need for hazardous materials training. The recommended practices require that railroad operating

employees who handle shipments of hazardous materials, but do not engage in emergency response activities, be trained in the following areas, as appropriate for the employees' responsibilities:

> --compliance with shipping paper requirements;
> --recognition of hazardous material markings and placards;
> --regulatory requirements for the inspection of shipments;
> --regulatory and railroad restrictions on the switching and placement in a train of rail cars containing hazardous materials;
> --procedures to be followed when a hazardous material incident occurs, including whom to notify, providing information on the rail cars containing hazardous materials in the train to emergency responders, and methods of protecting themselves and others at the scene of the incident.

Employees who handle hazardous materials shipments on key routes are also to be trained on special operating requirements for the routes, yard emergency response plans, and the characteristics of hazardous materials handled on the routes. Employees are to be re-trained in conjunction with existing railroad training programs, with employees on key routes to be trained annually and required to demonstrate proficiency.

The working group examining railroad operating practices also is developing video training tapes for train crews that operate key trains and other railroad personnel involved in the transportation of hazardous materials. A representative from rail labor is assisting in the development of these videos.

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B. Chemical Company Operating Practices

A second working group is scrutinizing the operating practices of the chemical industry. The Board of Directors of the Chemical Manufacturing Association has adopted recommendations by this group addressing the securement of tank cars, post-load testing, the prevention of over filling, removal or maintenance of unused fittings, and storage separation distances from mainline track. This working group also has prepared three video tapes for training chemical industry personnel on the proper securement and preparation of tank cars containing residues of hazardous materials.[3]

C. Emergency Response

A third working group is addressing emergency response issues. As a result of the efforts of this group, the railroad and chemical industries have agreed (with assistance from the International Association of Fire Chiefs) on recommendations for standard format shipping papers and train consists. The use of standard formats will help ensure that emergency responders properly interpret shipping documents given to them in emergencies. The emergency response working group also is studying ways of ensuring that consists accurately reflect the location of hazardous materials cars in trains, properly

[3] Tank cars containing residues of hazardous materials must also be handled with care. Experience has shown, however, that these cars are not always given proper attention. These videos stress the need for careful handling of these cars and discuss proper handling procedures.

accounting for cars that are picked up and dropped off by trains in local service.

D. Risk Assessment

A fourth working group is investigating the risk involved in the transportation of hazardous materials. It is hoped that the work of this group will provide greater insights than heretofore available into the relationships between the risk of release of a hazardous material and variables such as the design and construction of tank cars, track conditions, routing options, route characteristics (e.g., population), and train operating procedures.

One other inter-industry safety program should be mentioned, TRANSCAER, "Transportation Community Awareness and Emergency Response." TRANSCAER is a national community outreach program designed to improve community emergency response planning and emergency response capabilities. The AAR, CMA, and other chemical and transportation trade associations participate in TRANSCAER. Through TRANSCAER, participants will help local emergency planning committees learn about hazardous materials transported through their communities, assist the committees in developing emergency response plans, and aid local communities in their preparations for responding to hazardous materials incidents. The TRANSCAER participants also hope to make communities aware of industry safety programs. The focus of

TRANSCAER will be on communities located on key routes, although assistance will be provided to any community that wants to take advantage of the program.

III. Other Railroad Industry Safety Programs

In addition to the Inter-Industry Task Force, the railroad industry has numerous ongoing safety programs addressing the transportation of hazardous materials by rail. Individual railroads and the AAR annually conduct free emergency response training sessions for approximately twenty-thousand state and local fire fighters, police, and other personnel. The AAR also offers hazardous materials training classes at its Transportation Test Center in Pueblo, Colorado. Classes are offered on tank car safety, emergency responses to highway incidents, emergency response for first responders, and emergency response for hazardous material teams (the "experts"). Thousands of students from fire departments, local, state, and federal agencies, railroads, and chemical companies have attended the Transportation Test Center's training program.

The AAR's Bureau of Explosives publishes one of the most widely used publications on hazardous materials emergency response, *Emergency Handling of Hazardous Materials in Surface Transportation*, which contains initial response information for every hazardous material in DOT's Hazardous Materials Table. Another valuable Bureau publication is a set of *Emergency Action Guides*, which contain specific information on methods of responding to releases. The

Bureau also employs a force of eighteen inspectors who visit railroad and shipper facilities to ensure those facilities are complying with hazardous materials requirements.

Since 1970, the AAR and RPI have jointly funded the "Railroad Tank Car Safety Research and Test Project." One project of this research program, being conducted under the direction of the AAR's Tank Car Committee, is the development of specifications for steel tank car shells with improved resistance to failure. The Project also continually collects and analyzes data on the performance of tank cars in accidents and advises the Tank Car Committee and other appropriate groups of its findings. The Tank Car Committee itself continues to set requirements for the construction, maintenance, and safe operation of tank cars and is constantly researching possible improvements. Currently, the Committee is reviewing methods for reducing leaks from tank car pressure relief devices and improvements for attachments welded to tank car shells. The Committee also approves applications for the construction and modification of tank cars and inspects and approves facilities engaged in the construction, modification, or repair of tank cars.

IV. Legislative Proposals

The Subcommittee invited the AAR to comment on legislative proposals introduced in the Senate and the House of Representatives. The industry's comments are grouped under the major issues raised by those proposals.

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A. Preemption

Under the Federal Railroad Safety Act (FRSA), there is virtually total preemption by the federal government of state railroad safety regulation. A state may regulate railroad safety only in the narrowly defined case of an "essentially local" safety hazard. The railroad industry strongly opposes current proposals to reverse this longstanding policy of preemption.

The impediments to commerce and safety created by disparate state regulation are not theoretical. Disparate regulation can: (1) hinder rail transportation, perhaps to the point where hazardous materials are diverted to other, less safe modes; (2) increase the transit time for hazardous materials and thereby increase the potential for an accident; (3) increase the handling of cars transporting hazardous materials, creating a greater potential for an accident; (4) export the actual transportation of hazardous materials to other jurisdictions, thus inviting a battle between neighboring jurisdictions over the transportation of hazardous materials; and (5) taken together, result in a patchwork of laws with no cohesiveness, making compliance virtually impossible and proving counterproductive from a safety viewpoint.

The track and equipment maintenance policies and practices of a railroad do not change when they cross state lines. Neither does the training and instruction of its personnel who must assure that rail operations are conducted in a manner that comply with federal safety and hazardous materials regulations. The

railroad system is an integrated, interstate transportation network that must be subject to only one regulatory system.

It was for these reasons that Congress created an exclusive federal safety regulatory regime covering all aspects of railroad safety. Congress recognized that to subject railroads to the vagaries of 50 jurisdictions would be a burden on interstate commerce and would impair safety. There should be total federal preemption except where state regulation is necessary to deal with essentially local safety hazards. Most assuredly, there should not be 50 jurisdictions applying differing regulations or interpreting identical regulations in different ways and imposing penalties in accordance with different standards.

These considerations apply to hazardous materials specifically, as well as railroad safety generally. The Federal Railroad Safety Act specifically defines "Federal railroad safety laws" as including the HMTA.[4]

Even the enforcement by states of regulations purportedly identical to federal regulations would be burdensome and counterproductive, as Congress recognized when it enacted the Federal Railroad Safety Act twenty years ago. In rejecting pleas by state regulatory commissions for the authority to enforce state regulations identical to the federal regulations, the House Committee report explained the need for federal preemption of state regulation of railroad safety:

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[4] 45 U.S.C. §445(e).

> With the exception of industrial or plant railroads, the railroad industry has very few local characteristics. Rather, in terms of its operations, it has a truly interstate character calling for a uniform body of regulation and enforcement. It is a national system....In addition to the obvious areas of rolling stock and employees, such elements as operating rules, signal systems, power supply systems, and communication systems of a single company normally cross numerous State lines. To subject a carrier to enforcement before a number of different State administrative and judicial systems in several areas of operation could well result in an undue burden on interstate commerce.[5]

(Emphasis supplied).

The railroad industry can be assured of consistent application of railroad safety laws only if one agency has the authority to impose penalties for violations of those laws. Under the current system, final enforcement decisions rest with the Administrator of the Federal Railroad Administration. Consistent and fair application of railroad safety laws will be lost if federal preemption is weakened and other agencies are permitted to make those enforcement decisions. Even in cases where states adopt regulations identical to the federal regulations, the railroads will be subject to agencies in fifty (or more, if local jurisdictions are not preempted) jurisdictions determining what regulations mean in specific contexts and the penalties that should be appropriate.

As discussed previously, statistics show dramatic improvements in the railroad industry's safety record over the

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[5]House Report No. 91-1194, June 15, 1970, *reprinted in* 1970 U.S. Code Cong. & Admin. News 4104, 4109, 4110.

last decade. This safety record is justification for leaving the current regulatory system untouched, not for tinkering with it.

It is important that if legislation addressing federal preemption of state regulation is enacted, the legislation reaffirm preemption of state railroad safety regulation under the Federal Railroad Safety Act. There have been numerous instances in the past in which a state has attempted to prescribe equipment standards for trains moving through it. While the burdens imposed by such requirements are obvious--and almost uniformly struck down by the courts--state efforts persist and call for an unequivocal declaration of preemption by the Congress.

Previous state attempts to impose licensing, permitting, and registration requirements on railroads have also proven to be extremely burdensome and counterproductive from a safety viewpoint. Recently, one state imposed permit requirements that DOT found conflicted with DOT regulations and created the potential for considerable delays of shipments. Problems with this state have led one railroad to consider stopping hazardous materials shipments at the state border and loading shipments onto trucks. It is to prevent such an undesirable result that Congress must take care not to undermine the current preemption of state regulation afforded by the Federal Railroad Safety Act.

B. Regulation of Train Operations

H.R. 3520 contains a requirement that the Secretary of Transportation regulate the operation of trains carrying

hazardous materials designated as toxic by inhalation, a Class A or B explosive, liquified petroleum gas, and liquified natural gas, and "other hazardous materials the Secretary determines should be subject to such regulations." These regulations are to include "maximum speed, track priority, switching and classification yard activities, car placement, and crew size and qualifications." In effect, these regulations are to embrace every facet of train operation for virtually any train that operates in the United States. Many trains contain at least one car of the materials specified in the bill, and most could contain some quantity of the "other hazardous materials" the Secretary is allowed to designate. This broad regulatory intrusion into train operations cannot be justified.

As noted earlier in my testimony, the railroads, the chemical companies, and suppliers of railroad equipment have been carefully reviewing actions that could be taken to improve safety in the transportation of hazardous materials. At the direction of the AAR's Board of Directors, the railroads are now implementing the recommended practices concerning train operations that we referred to previously. Those recommendations include speed restrictions, passing restrictions, and inspection requirements for trains posing a particular concern from a hazardous materials perspective. Routes heavily traveled by trains transporting those hazardous materials of particular concern will be subject to requirements for wayside defective

bearing detectors, passing restrictions (in the case of track of a lesser quality), and inspections.

These recommended practices have been carefully developed by those closest to the problem of handling the movement of hazardous materials by railroad, day in and day out. This industry effort should be given an opportunity to work, particularly given the lack of any showing that it does not adequately respond to the problem at hand. Absent compelling facts, injecting federal safety regulators into such highly contentious management/labor issues as crew size will not further safety in the movement of hazardous materials.

C. Registration

There have been numerous proposals to require the registration of those involved in the manufacture or movement of hazardous materials so they can be identified. In turn, identification of these entities supposedly would enable enforcement officials to be more effective in ensuring compliance with the regulations. There is no mystery, however, concerning the railroads that operate, where they operate, and how they operate. The Department of Transportation, as the primary enforcement agency, needs no further information concerning the identity or location of any railroad's business.

Insofar as railroads are concerned, the only function of registration would be as a mechanism for raising revenues. Registration would involve the payment of fees which under some

bills would then be used to finance the costs of federal inspectors. In other words, the fees would really be a tax. Under other bills, registration fees would be used to finance the cost of providing emergency response personnel such as fire fighters. Proponents of financing emergency response personnel through the imposition of registration fees should recognize that railroads already devote considerable resources to the training of government emergency response personnel. As we discussed earlier, railroads annually train thousands of state and local emergency response personnel free of charge.

D. Emergency Response Procedures

It has been proposed that DOT be required to promulgate regulations establishing emergency response procedures and personnel training requirements. In fact, railroads already have established emergency response procedures, rendering legislation unnecessary. For example, under a contract with the DOT, the AAR has developed a model emergency response plan for railroads entitled, *Hazardous Material Emergency Response Plan for Railroads*.

Insofar as training of railroad employees is concerned, the railroads currently provide functionally relevant hazardous materials training to train crews, mechanical workers, and clerical employees. Train crews are educated on their emergency response roles during their classes on railroad operating rules (usually held annually, or biennially). Employees who actually respond to emergencies are, of course, given extensive training

in accordance with OSHA requirements. Indeed, DOT already has a rulemaking on this subject in progress, rendering legislation in this area unnecessary.

E. Tank Cars

Bills have been introduced in the House that would prohibit the use of a tank car for the transportation of hazardous materials unless the tank car's brake equipment support attachments are attached to a pad on the tank shell and not directly to the shell. The advantage of a pad is that if the brake attachment is ripped off in a derailment, it will be less likely to tear a hole in the tank shell. These proposals are unnecessary, because they would prohibit owners from being able to satisfy safety concerns by using an economical, perfectly safe alternative to pads.

Since 1969, the AAR has required that pads be used on tank cars (DOT adopted this requirement in response to an AAR petition in 1971). Prior to that date, for a few years four builders welded brake attachments directly to the shell. The AAR's Tank Car Committee is requiring owners of those tank cars built with brake support attachments welded directly to the tank shell to either insert a pad between the attachments and the tank shells or weaken the attachments so that in a derailment the attachments will shear off without tearing the tank shell. There is no safety reason to prohibit this latter alternative.

F. Transmitting Manifest Information to Emergency Responders

A proposal that has drawn the opposition of DOT and the unanimous opposition of industry groups would require DOT to establish, through a contract with a private entity, an elaborate system for tracking hazardous materials shipments. The proposed system would impose tremendous costs upon industry and the public, but yield only marginal benefits. In brief, the system would require that:

- a central computer data system be created;
- shippers of hazardous materials transmit a manifest for each shipment to that central system;
- the manifest include "vital statistics" such as vehicle identification numbers and information identifying the hazardous materials shipped; and
- the private entity hired by DOT provide emergency responders with necessary telecommunications equipment and whatever else they need to access the central computer system.

The proposal would require that all these activities of the private entity be provided at no cost to the federal government or the emergency response community. All the funding would be derived from a manifest fee imposed on shippers.

The cost of this proposed system would be staggering. In a letter to Congressman Glenn Anderson dated May 8, 1990, DOT General Counsel Phillip Brady estimated that the cost of the proposal would be $12.3 billion annually. While this money initially would be paid by the shippers of hazardous materials, it is the general public that would ultimately bear the expense. Furthermore, because this expense would be tax deductible, Mr.

Brady estimated that this proposal would result in an annual loss of $3.7 billion in federal revenues (thus making it impossible to comply with the directive in the proposed legislation that the cost of the proposed system be borne solely by shippers).

Only a great need could justify the establishment of such a complex and costly system. But, as a review of current emergency response procedures and resources in place shows, that need does not exist. The proposed computer system would be largely redundant. DOT now requires that shipments of hazardous materials be accompanied by shipping papers. The shipping papers indicate the hazardous materials transported, their DOT hazard classes and commodity specific UN identification numbers, and twenty-four hour emergency response telephone numbers. DOT distributes to all fire departments free of charge a DOT emergency response guidebook which, for each UN identification number, contains information on the hazards posed by the hazardous material and the appropriate emergency response measures.

DOT also requires that placards and panels be placed on vehicles containing shipments of hazardous materials. The placards and panels contain information indicating the hazard class of the material (e.g., "poison gas") and the appropriate UN identification number.

In addition, railroads keep track of shipments by computer and railroad employees are readily available on a twenty-four hour basis to provide detailed information on a shipment.

Through the AAR, the railroad industry publishes a book containing in great detail commodity specific emergency response information. Many emergency response personnel have copies of this book, and many railroads include the commodity specific information from this book on shipping papers when transporting hazardous materials in bulk.

There are other sources of emergency response information. Most notable is CHEMTREC, the chemical industry's round-the-clock system for putting emergency response personnel into contact with chemical industry experts.

In his letter to Congressman Anderson, Mr. Brady stated that DOT is unaware of any transportation accident in which lives would have been saved had this proposed computer database existed. The record shows that the current system for the identification of hazardous materials and the transmission of that information to emergency responders works well. There exists no justification for the expenditure of billions of dollars annually on a computer system for identifying hazardous materials.

G. Radioactive Materials

S. 728 would require that high level radioactive waste be transported only in dedicated trains and on routes selected under DOT standards. It is the policy of the railroad industry that shipments of high level radioactive waste be shipped in dedicated trains and we are aware of no instance where this policy has not

been followed. We are unaware, however, of any justification for the proposal that DOT implement routing requirements.

Last July, the Administration, in testimony before the House Public Works Committee, offered proposed amendments to the HMTA. In a section-by-section analysis of the proposed amendments, the Administration stated:

> The routing of railroad shipments of hazardous materials has been the subject of a number of studies. Based on those studies we have concluded that, absent vast and impractical restructuring of the nation's rail system, efforts to make nationwide changes in rail routing (e.g., routing hazardous materials traffic away from heavily populated areas) would not improve safety. Given the apparent infeasibility of improving safety by creating a Federal system of routing hazardous materials by rail, the Department has chosen to limit [its proposed routing] provisions to highway shipments.

What is true for hazardous materials in general is true for high level radioactive materials. Routing requirements apparently would not improve safety.

H. Train Inspections

S. 581 proposes that all trains carrying hazardous materials be inspected before departure by an "inspector employed by the railroad" and "certified by the railroad." This provision would result in increased labor costs for the railroad industry without any corresponding safety benefit.

FRA regulations permit train crews, in addition to employees designated as mechanical inspectors, to perform pre-departure inspections.[6] Train crews perform these inspections when

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[6] 49 C.F.R. §215.13(c).

mechanical inspectors are not present at the time a train departs, e.g., at remote locations and during hours when few trains are departing from a yard. FRA regulations specify what must be inspected by train crews. For example, train crews must inspect for insecure couplings, overheated wheels, and leaning or swaying rail cars.[7] With respect to the items train crews must look for when performing pre-departure inspections, FRA regulations conclude that "[t]hese conditions are readily discoverable by a train crew member in the course of a customary inspection."[8]

Thus, there is no reason to require mechanical inspectors to conduct all pre-departure inspections. Experience has shown that train crews can perform train inspections safely. On the other hand, as stated, it would be extremely costly to have mechanical inspectors present every time a train departed its origin location.

V. Conclusion

Mr. Chairman, the railroad industry appreciates the opportunity to testify today on the transportation of hazardous materials by rail. We hope the information in our testimony will be of assistance to you and your Subcommittee. I would be happy to answer any questions you might have on the issues being discussed today.

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[7] 49 C.F.R. Part 215, Appendix D.

[8] *Id.*

ASSOCIATION
OF AMERICAN
RAILROADS

William H. Dempsey
President

July 30, 1990

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510-6125

Re: July 25 Hearing On Hazardous Materials Transportation

Dear Mr. Chairman:

The railroad industry appreciates the opportunity we were given to testify before the Subcommittee on Surface Transportation on the transportation of hazardous materials. The AAR is grateful that it was given the chance to express the industry's views on the specific issues of concern to your Committee.

Subsequent to the hearing, you submitted a list of questions. The answers to those questions follow. In addition, enclosed is the letter to Congressman Applegate by the CSX Corp. which during my oral testimony I asked be made part of the record. The letter clears up misunderstandings concerning the transmission of emergency response information to public authorities at the Miamisburg, Ohio, accident.

I should like further to elaborate on one aspect of my testimony. The industry strongly opposes the proposed requirement in S. 581 that all trains carrying hazardous materials be inspected before departure by an "inspector employed by the railroad" and "certified by the railroad" (pp. 22 and 23 of my testimony). The intent of this proposal seems to be to require that inspectors (carmen) attached to the mechanical engineering departments of the railroads perform all pre-departure inspections. At present, FRA regulations permit train crews (brakemen or conductors) to perform pre-departure inspections because the items that train crews must look for when conducting pre-departure inspections are, in the FRA's words, "readily discoverable by a train crew member in the course of a customary inspection." I testified that experience has shown that train crews can perform pre-departure inspections safely and that it would be extremely costly to assign mechanical inspectors to perform pre-departure inspections when there are few trains departing.

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Permit me to add that under the terms of a National Agreement reached in 1964 and amended in 1975, it is not necessary to employ mechanical inspectors at a facility if there is not a sufficient amount of work to justify employing an inspector. The proposal in S. 581 to require mechanical inspectors to perform pre-departure inspections would, therefore, be a legislative amendment to longstanding collective bargaining agreements and would constitute legislative interference in the collective bargaining process. Since there is no overriding safety consideration, there is no justification for interfering in the collective bargaining process and the proposed inspection requirement should be deleted.

Questions from Senators Hollings and Exon

Computer Tracking

Two pending measures, H.R. 2584, introduced by Congressman Applegate, and S. 2318, introduced by Senator Metzenbaum, would require the establishment and use of a national computer system to register the movement of all hazardous materials. Would any of you care to comment further on the need and cost associated with these proposals?

The proposed computer system was addressed at length in my written testimony, pp. 19-21. DOT has estimated the cost of the proposed system to be $12.3 billion annually. While shippers initially would pay this money, the general public ultimately would bear the expense Because fees associated with the system would be tax deductible, DOT has estimated that the computer system would result in an annual loss of $3.7 billion in federal revenues.

The proposed computer system would be merely a redundant system, duplicating capabilities of the current system for identifying hazardous materials in transit and transmitting that information to emergency responders. The current system encompasses shipping papers, the DOT emergency response guidebook, and placards and panels. In addition, railroad employees are readily available on a twenty-four hour basis to provide detailed information on a shipment, and the chemical industry's CHEMTREC also is available on a round-the-clock basis to provide information on chemicals involved in a transportation accident.

Federal Assistance

Other than what has been outlined in proposed legislation, how do you believe the Federal government might improve its assistance to States and localities, particularly in terms of information

and resources to better respond to transportation incidents involving hazardous materials?

One area in which there might be room for improvement is imparting information to states and localities on emergency response training programs already in existence. For example, in July of 1986 the Research and Special Programs Administration and the Federal Emergency Management Agency submitted to Congress a report entitled *Hazardous Materials Training, Planning, and Preparedness*. The report identified 412 different emergency response courses given in this country, the overwhelming majority of which targeted fire fighters. Given the focus in recent years on emergency response training, the number of courses on emergency response probably has increased. Yet, testimony before Congress on the issue of hazardous materials emergency training suggests that states and localities probably are not aware of the availability of a large number of training programs.

Federal Safety Permit

What are your views on the need for a Federal safety permit requirement for hazardous materials presenting a high degree of risk with the cost of maintaining such a system being borne by the carriers?

The proposals for a safety permit have focused on motor carriers, not railroads. A permit system purportedly would enable the federal government to identify those transporting the hazardous materials of concern and concentrate its regulatory and enforcement efforts on those carriers. A permit system makes no sense for the relatively small number of railroads, however. There is no mystery concerning the identity of railroads, nor their locations. Furthermore, because of the nature of the railroad system, all railroads potentially would transport hazardous materials. There is no additional information on railroads that would be gained from the imposition of a permit requirement and a permit system would not improve the accountability of railroads.

Statistical Discrepancies

There seem to be some reporting disparities between the rail hazmat safety statistics you cite in your testimony and those included in RLEA's testimony as found in GAO's Rail Safety Reports. You indicate that the number of accidents in 1988 resulting in release of hazardous materials was less than half of the 1979 figure -- 44 versus 105. However, GAO indicates that, from 1985 to 1989, hazardous material releases increased 40 percent. GAO also found that, from 1984 to 1988, the number of safety defects found by FRA hazardous material inspections

increased 69 percent while violations (serious defects) increased 600 percent. Do you agree with these findings?

All of the statistics described in your question are correct; while RLEA's counsel erroneously attributed his numbers concerning hazardous materials to the GAO Report, they are also correct.

These results can be reconciled once it is recognized that the volume of hazardous materials carried by railroads has been constantly increasing. Thus, not surprisingly, the number of incidents has also risen. However, and most importantly, there has been an overall decrease in incidents as a percentage of volume: the percentage of rail shipments of hazardous materials that resulted in a release of product decreased from 1985 to 1989, inclusively, from .0076% to .0070%.

It also should be noted that the number of releases in any given year is not the relevant measure of the threat to public safety from the transportation of hazardous materials. Over 65% of railroad hazardous materials releases are due to defective or loose fittings, valves, or closures on tank cars, which seldom pose a threat to public safety, and many other releases are equally innocuous. Conversely, the trend for hazardous materials releases from tank cars, which ha e a much greater potential to result in a serious hazardous materials accident than releases from other rail vehicles, is very favorable. AAR statistics show that the tank car leakage frequency, that is, the number of leaks per 1000 tank car loads, decreased from 1.6 to 1.1 in the 1985-1989 time period.

With respect to the other statistics cited by RLEA in its testimony, it is not surprising that from 1987 to 1989 the number of train accidents involving a release of hazardous materials increased 12% (not 40%, as indicated by RLEA), that the number of train accidents in which a car containing hazardous materials derailed or was damaged increased 35%, and that the number of train accidents involving a hazardous materials car increased 43%. The number of shipments of hazrdous materials transported by rail increased 44% in the 1987-1989 time period. Furthermore, focusing on percentage increases from one year to the next ignores the improvement in safety statistics over the last decade. There can be no dispute that the trend in the 1980s was favorable, as the statistics cited in my testimony show, or that the 1989 accident statistics should make the railroad industry proud. Indeed, in 1989 there were 1.7 million shipments by rail of hazardous materials, yet there were only fifty-six accidents over the FRA reporting thresholds in which hazardous materials were released.

Regarding the increase in the number of safety defects and violations found by FRA hazardous materials inspectors, there is

a lack of information concerning these violations and safety defects. In its report, cited by the RLEA, GAO said that "inspectors generally focus on inspecting tank cars" (GAO, *Railroad Safety: DOT Should Better Manage Its Hazardous Materials Inspection Program*, p. 19, Nov. 1989). Tank cars are owned by shippers, not railroads, so violations of tank car regulations usually would not be the responsibility of the railroads.

Emergency Response Manual

You indicated in your testimony that the AAR publishes a book containing commodity specific emergency response information. What steps does the AAR take to ensure that all personnel who respond to railroad hazardous material emergencies have a copy of this manual, and understand how to use it?

The book referred to is *Emergency Handling of Hazardous Materials in Surface Transportation*. This book, as the question states, contains commodity specific response information for every hazardous material in DOT's Hazardous Materials Table. Railroads distribute approximately 1,000 copies each year to fire departments free of charge. More importantly, the major railroads have the information from the book on computer tape. The train crew on each train is given a printed train consist which contains the information on the tape for the hazardous materials carried in the train. This system has the advantage of not being dependent on emergency responders having the book in their possession when responding to accidents.

Attached a copy of the portion of a UP train consist that contains the information from *Emergency Handling of Hazardous Materials in Surface Transportation*. The consist groups by commodity the cars in the train containing hazardous materials. The first group consists of five cars carrying vinyl chloride. The consist indicates that these cars are at the end of the train (it actually states the cars are the first five cars from the caboose, but elsewhere the consist indicates there was no caboose on this train), sets forth the car numbers, the hazard classification, and the UN identification number, and identifies vinyl chloride as an environmentally hazardous substance with a CERCLA reportable quantity of one kilogram. Following this information is a page of commodity specific emergency response information.

Opposition to Legislation

Your statement indicates opposition to most of the legislation initiatives proposed to address hazmat. Does the AAR have any alternatives, or are you satisfied with the status quo?

Actually, the AAR does not oppose most of the legislative initiatives that have been proposed. For example, H.R. 3520, as reported by the House Energy and Commerce Committee, requires the retention of markings and placards until hazardous materials are removed from containers, prohibits tampering with placards, forbids representing that a package is suitable for transporting hazardous materials if it is not, and requires a study of hazardous materials emergency response capabilities. The industry supports these measures, whether they be implemented by new legislation or by regulation under existing law. I note that many of the provisions of H.R. 3520 address motor carrier transportation, which does not directly concern the railroad industry.

The railroad industry does strongly oppose any proposal to weaken federal preemption of state hazardous materials regulations (pp. 11-14 of my testimony). For the reasons given in my testimony, Congress should reaffirm, not reverse, the longstanding policy that the federal government be the sole agency responsible for promulgating and enforcing hazardous materials regulations (except for local safety hazards). Apparently, because of this emphasis on preemption, the Subcommittee may have gained the impression that the railroads oppose any legislative changes to the hazardous materials laws. That is not the industry position, however.

Tank Cars

What is the current number of tank cars over 20 years old in use today, and what percentage do they make up of all tank cars? Are these cars routinely used for hazmat shipments, and what are the safety implications of their usage?

There are approximately 48,000 tank cars over 20 years old. The total tank car fleet numbers approximately 178,000. Approximately 24,000 of the tank cars that are over 20 years old are used to transport hazardous materials, while the total number of tank cars used to transport hazardous materials is approximately 98,000.

It is perfectly safe to use these cars. DOT regulations (49 C.F.R. §179.31) require that tank cars be tested at specified intervals. Where appropriate, the regulations provide for shorter intervals between tests as tank cars get older. The regulations further specify how the tests are to be conducted. Thus, DOT regulations protect against hazards arising out of the aging of tank cars.

Questions from Senator Kasten

Although this Nation's record of safely transporting H/M is admirable, we must continue to look for appropriate ways to

improve this record. Too often, it seems, we look to the Government to solve problems. Not enough attention is given the practical and effective programs that have been established by the Private Sector. Some of these programs have been described here today. My question to the panel is: How can we improve communication about these programs; how can we notify the thousands of Emergency Response Personnel throughout the country that experts are available to provide assistance whenever an H/M incident occurs?

The AAR fully agrees with the premise behind this question, that is, part of the problem in the emergency response area is ensuring that emergency response personnel are aware of the resources available to them should a hazardous materials emergency arise. The railroad industry is addressing this issue in a number of ways. As was stated in my testimony, the nation's railroads and the AAR together conduct free training sessions for approximately twenty-thousand emergency response personnel. In these training sessions, railroad instructors teach attendees what resources are available to them to aid in their responses to hazardous materials emergencies. Furthermore, the AAR, CMA, and others have recently instituted a program called TRANSCAER, "Transportation Community Awareness and Emergency Response." TRANSCAER is designed to stimulate community emergency response planning. By planning ahead of time, community emergency response personnel will become aware of the resources they can contact in an emergency.

Finally, because railroads are a fixed presence in the communities in which the railroads operate, at a minimum the communities usually are aware of how to contact their railroads should a problem arise. In emergencies, therefore, railroads can be easily contacted and can make local emergency responders aware of the resources available to them. For this reason, public policy would be served by greater reliance on the rail mode.

We have heard testimony regarding improperly prepared shipping papers and improperly placarded trucks and rail cars. DO YOU HAVE SUGGESTIONS FOR IMPROVING THE CURRENT HAZARDOUS MATERIALS NOTIFICATION SYSTEM, WHICH RELIES SO HEAVILY UPON PROPERLY PREPARED SHIPPING PAPERS AND PROPERLY PLACARD VEHICLES?

(a) Should shipping paper requirements be changed?

(b) Should placarding standards be changed?

(c) Should companies wishing to transport H/M be required to obtain a permit from DOT before being permitted to transport these materials?

(d) DOT assigns safety ratings to motor carriers. It has been suggested that only companies with a Satisfactory rating be permitted to transport H/M. In your view, is this an appropriate restriction and how long should a rating be good for before the company must be reaudited by DOT?

While the AAR cannot say that errors are never made in placarding rail cars or preparing shipping papers, the AAR is not aware that this is a significant problem in the railroad industry. Importantly, no instance has come to the AAR's attention where emergency response efforts in response to a railroad hazardous materials accident were affected by improperly placarded rail cars or improperly prepared shipping papers.

As was mentioned in my testimony, one of the working groups of the Inter-Industry Task Force on the Safe Transportation of Hazardous Materials by Rail recently developed recommendations for standard format shipping papers and train consists. Attached to this letter is a user's manual, published just last month, which instructs those preparing shipping papers on the use of the standard format. Use of a standard format will make it easier for emergency responders to interpret shipping documents given to them in an emergency.

In the last year DOT has made several changes to the shipping paper requirements (55 Fed. Reg. 870 (1/10/90); 54 Fed. Reg. 27138 (6/27/89)). DOT changed its requirements concerning the description of hazardous materials on shipping papers, instituted a requirement that shipping papers contain 24-hour emergency response telephone numbers, and added a requirement that emergency response information accompany shipments of hazardous materials when they are transported.

Thus, private industry and DOT have been making changes to shipping papers to ensure that emergency responders receive the information they need when a railroad hazardous materials accident occurs. The railroad industry will continue to seek modifications to shipping papers (and placards) as it learns of improvements that can be made to the system for communicating emergency response information to emergency responders. In fact, that was just done in a current rulemaking proceeding in which DOT is extensively amending its hazardous materials regulations to make them more compatible with international regulations. The AAR has submitted comments in this proceeding asserting that, contrary to what DOT has proposed, DOT should not give the regulated community options as to what information is contained on shipping papers. It is the railroad industry's belief that shipping papers should be standardized to the greatest extent possible to ensure against confusion on the part of those who need to gather information from shipping papers.

The railroad industry has no recommendations at this time concerning placards, and the permit issue was addressed on page three in response to a similar question. Regarding safety ratings for motor carriers, the railroad industry is only subject to motor carrier regulations insofar as it transports company supplies and personnel in motor vehicles. Thus, this issue only marginally affects the railroad industry.

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I would be interested hearing more of your views concerning the proposed "Central Reporting System and Data Center."

(a) How would this system work in a Less Than Load Transportation environment? Do you have thoughts as to how the accuracy of the data entered into the system by the shipper could be maintained given the fact that shipments are frequently broken down and reconsolidated during transportation?

(b) Many trucks have license plates from several different states. In your view, could this create confusion for the shipper, who is responsible for entering this information into the data system.

(c) If the shipper is responsible for entering the information at the beginning of the shipment, someone will have to be responsible for notifying the data base that the shipment has safely arrived. I assume this responsibility would be borne by the transporter. Do you have any estimates of the costs this new requirement would impose upon the transporters?

(d) I'm aware of a tragic accident that occurred in Kansas City where 6 firefighters were killed. Some have said that better communications would have prevented this accident from occurring. Is this so?

My testimony extensively commented on the proposed computer reporting system (pp. 19-21) and the issue is further addressed on page 2 of this letter. Regarding the specific questions, railroads receive less than load shipments when they already have been consolidated. It is the motor carrier industry that would have to implement the computer system for less than load shipments.

The motor carrier industry also is better suited to answering the multiple license plate issue. Question (c) assumes that someone would have to notify the computer system when a shipment has arrived. The AAR understands that the computer system would not be notified upon the arrival of a shipment, and thus has not developed any cost data. If such a requirement were instituted, the railroad industry would have to know exactly what is meant by "arrival." If a shipment is deemed to have arrived only at the point when it is unloaded, the railroad industry would not know when arrival occurs, since consignees, not railroads, unload the cars.

The Kansas City accident was not a railroad accident. It is the industry's understanding that the trailer at the construction site contained explosives, but that all markings indicating the presence of the explosives had been removed. Thus, the traditional means of communicating the hazards of a transport vehicle to firefighters was not utilized at the accident scene. While the AAR does not know the details of the accident, it certainly agrees with those who state that until a container of a hazardous material has been emptied, there should be some indication on the container of its contents.

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We are here to consider the reauthorization of the Hazardous Materials Transportation Act. This panel represents an impressive cross-section of the Trucking and Rail Industries and the Shipping Community. I think we would be remiss if we did not ask you what you believe should be done to improve the safe transportation of hazardous materials. I would appreciate getting beyond broad rhetoric to specific measures the Congress should take to improve safety. Your thoughts?

Much is being done to improve the safe transportation of hazardous materials by rail. My testimony reviewed the efforts of the Inter-Industry Task Force on the Safe Transportation of Hazardous Materials by Rail, railroad industry training programs, efforts to improve tank cars, and improvements made to shipping papers. DOT has recently promulgated new requirements for shipping papers and in two ongoing rulemaking proceedings is investigating upgrading the types of tank cars required for individual hazardous materials (HM-181 and HM-175A).

Given the efforts of private industry and the DOT to improve safety, and the impressive safety record, there seems to be no warrant for Congress to legislate detailed requirements concerning the transportation of hazardous materials by rail. Rather, Congress should continue to grant DOT broad discretion to promulgate regulations necessary to ensure that hazardous materials are transported as safely as possible.

The AAR strongly reiterates that if Congress is to address federal preemption of state hazardous materials regulations, Congress must reaffirm the preemption of state regulations afforded by the Federal Railroad Safety Act. State regulation and enforcement of hazardous materials regulations hinders the safe movement of hazardous materials by rail (see my testimony, pp. 11-14). It would be most unfortunate if Congress were to pass a bill that purportedly advanced the goal of safety, but actually adversely affected safety by weakening the Federal Railroad Safety Act's preemption of state regulatory and enforcement activities.

Mr. Chairman, I hope the answers provided are of assistance to you and the other Subcommittee members. As always, my staff and I would be pleased to provide any additional information that you might need should further questions arise.

Sincerely,

W. H. Dempsey

cc: The Honorable James J. Exon

Senator EXON. Thank you, Mr. Dempsey. We appreciate your testimony.

Ms. Batts.

STATEMENT OF LANA R. BATTS, SENIOR VICE PRESIDENT, AMERICAN TRUCKING ASSOCIATIONS; ACCOMPANIED BY CLIFF HARVISON, PRESIDENT, NATIONAL TANK TRUCK CONFERENCE

Ms. BATTS. Thank you, Mr. Chairman. I welcome the opportunity to testify today. And I brought with me Cliff Harvison, who is the president of the National Tank Truck Conference whose members are very much involved in the transportation of hazardous materials.

I think you can see from the testimony today that there are no easy or simple answers to this problem. We are dealing with a very complex set of issues. My full statement goes into a number of issues in detail. What I would like to do today is just address three areas.

First, the Hazardous Materials Transportation Act is now 16 years old. It served us well over the years, but like anything else that is 16 years old, it is starting to show its age. Industry practices have changed and have been updated. However, the Hazardous Materials Transportation Act has not. Basically, it is broken and is in need of repair. We hope that the repair takes place shortly.

The first thing that must be repaired is in the area of Federal preemption. We must have Federal preemption in the area of technical standards. For example, New York City has issued cargo tank regulations for the intra-city deliveries of certain commodities and has designed the tank which must be used to make those deliveries. Those cargo tanks are not in compliance with the Department of Transportation regulations. In essence, New York City designed cargo tanks which are only legal in New York City. They are not legal anyplace else in the country. More importantly, tanks that are legal in every other part of the country are not legal in New York City.

We must have Federal preemption on routing and time of day restrictions. For example, a small community in Montevallo, AL, passed regulations prohibiting the transportation of hazardous waste during certain weather conditions. These regulations force the carrier to detour from the most practical route and into neighboring routes and villages. The rules are only there to export the risk from Montevallo to other jurisdictions in Alabama.

The third area where we must have Federal preemption is in the inconsistency ruling process currently practiced by the Department of Transportation. For example, ATA filed for a ruling of inconsistency with the Special Research and Programs Administration of DOT on the routing and time of day restrictions in New York City. RSPA agreed with ATA a year later. New York City promptly appealed and a year and a half later, we are still waiting for RSPA to make its decision—in essence, a 2½-year process for something which should have been settled immediately.

The second area that I would like to address is any legislation which is passed must treat all modes equally. I think that is what Senators Metzenbaum and Specter were asking for. Motor carriers

and the public cannot understand the exemptions given to the rail industry after massive accidents such as those in Miamisburg, OH. It is not a constitutional issue. Congress passed the law in 1970 preempting the states in certain areas. Congress can change the law and allow the states to be involved.

Emergency responders come to all accidents, not just those that happen on highways. Yet, in almost every instance where a state or a locality or a township has proposed and/or implemented a fee structure, they have exempted the railroads.

First, two things are happening. The first is that next all political jurisdictions are becoming involved. We expect to see mosquito districts implementing fees next. The second thing is that these fees do not apply to the railroads. Of course, I find the most amazing thing about all these fees is that while local communities will scream and yell about how terrible it is to have hazardous materials trucks going through their community, immediately after they assess a $50 sticker, that same truck is safe.

We also believe that the investigation, surveillance, and enforcement actions by the states must apply to all modes. We believe the states have the ability to investigate and to assign fees to all modes, not just motor carriers. And we believe that there should be a program established similar to the Motor Carriers Safety Assistance program. I guess we have more faith in the states than do the railroads.

Finally, Mr. Chairman, I, like everyone else, would like to address the computer tracking system. You have heard all the testimony which my written statement duplicates. But I do not have any faith in a computer tracking system. Let me give you one example. We all remember the accident that took place on I-70 about 9 months ago in which there was a truck overturned. The truck closed down that section of I-270 for almost 20 hours. The emergency responders had the papers off that truck immediately. They chose not to believe those papers. They saw that it was a Department of Defense shipment and immediately assumed it had to be bombs. It was not bombs. It was household products going to a local PX. For 20 hours they chose not to believe the shipping papers. If they will not believe the papers in hand, why are they going to believe a computer tracking system?

Mr. Chairman, I have raised a lot of issues. Our full statement addresses them in depth. We look forward to working with this Committee. We have found over the past that your interest has always sparked our interest. And I think we can work out a win-win piece of legislation for the generators of hazardous materials, for the transporters of hazardous materials, and for the responders to accidents.

Thank you very much.

[The statement and questions and answers follow:]

STATEMENT OF LANA R. BATTS, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS

I am Lana R. Batts, Senior Vice President of Government Affairs for the American Trucking Associations. ATA welcomes the opportunity to testify on the matter of hazardous materials. The subject is of vital importance to all motor carriers -- large and small, private and for-hire -- which transport hazardous materials whether in bulk containers such as tank trucks or in drums, cartons, cylinders, portable tanks, and packages.

The motor carrier industry is not a single industry; rather, it is a collection of industries -- from truckload to less-than-truckload, from general freight carriers to specialized carriers such as munitions transporters, and from coast-to-coast delivery to local pick-up and delivery. The trucking industry is composed of more than 260,000 American firms, and accounts for nearly 80 percent of all freight transportation revenues in this country. The trucking industry employs 7.2 million Americans and generates annual revenues in excess of $239 billion. As the trucking industry's slogan states: "Without Trucks, America Stops". The public and the American economy depend on truck transportation to provide the goods, services, and materials that move America.

As you know, Mr. Chairman, frequently these different industry segments are not in agreement with each other. However, the industry is united on the need to have a stronger Federal leadership for the safe transportation of hazardous materials. We stand united with our 51 affiliated trucking associations located in every state and the District of Columbia, 10 affiliated conferences, and several thousand motor carrier members, representing every type and class of motor carrier in the nation -- for-hire and private as well as regulated and exempt -- in support of Federal authority which is more clearly defined to avoid regulatory conflicts that adversely impact safety and efficiency of hazardous materials transportation.

The hazardous materials legislation which Congress enacts will impact the operations of almost all motor carriers. I am pleased to share with you the trucking industry's views on what must be done to improve both the safety and efficiency of hazardous materials transportation.

Representatives from the motor carrier industry have appeared previously at hearings before the House of Representatives Subcommittee on Transportation in order to present individual views on legislation needed to update the Hazardous Materials Transportation Act. There was unanimous agreement among motor carriers expressing the need for a stronger Federal role in the areas

of technical regulations, routing, and fees. I urge that you consider their recommendations so that the safety and efficiency of hazardous materials transportation can be improved and we can stop the proliferation of unnecessary and restrictive laws which do nothing for safety and seriously burden commerce.

Our comments will address several areas of concern:

1. Areas where federal pre-emption is necessary,
2. Areas where federal guidelines are necessary, and
3. Areas where modifications are necessary in the existing law.

II. FEDERAL PRE-EMPTION

The trucking industry believes that hazardous materials reauthorization legislation should explicitly clarify that the Federal government has sole authority in the following areas:

- The designation, description, and classification of hazardous materials;
- The documentation, description, and preparation of hazardous materials shipping documents;
- The design, construction, maintenance, marking, repairing, testing, and certification of all packaging including portable tanks, cargo tanks, and equipment which is used in the transportation of hazardous materials;
- Requirements for reporting incidents involving the unintentional release of hazardous materials in transportation, and the collection of data concerning such incidents; and
- Standards for state and local jurisdictions to utilize in determining routing for hazardous materials shipments.

An example of the need for uniform regulatory requirements is the unique requirements of the City of New York. New York requires certain cargo tanks to be equipped with pressure venting devices which are not specified in the cargo tank construction regulations in 49 CFR Part 178. These regulations effectively make any cargo tank that is built according to Department of Transportation specifications illegal for local deliveries in the City of New York. Therefore, carriers utilizing those tanks affected by these requirements can operate in all 50 states legally, but can not go into New York City.

Variations in such requirements from one governmental jurisdiction to another is unnecessary. With over 66,000 separate jurisdictions within the United States, it is impractical to allow jurisdictional regulations dealing with these matters because they would result in a variety of unjustified requirements which would adversely affect safety and the ability of transporters to comply.

These issues should be addressed in legislation. ATA supports provisions which clearly define the Federal and state roles regarding responsibility for hazardous materials transportation in the area of technical regulations.

III. ROUTING

State or local laws on routing of hazardous materials and time-of-day restrictions should be allowed, but only if they conform to guidelines and performance standards promulgated by the Department of Transportation. Such performance standards should assure that state and local governments will not:

- Burden commerce;
- Adversely affect safety; or,
- Export risk to adjoining jurisdictions.

An example of the need for standards for routing and time-of-day restrictions is a case currently before Research and Special Program Administration (RSPA) concerning a small town in Alabama. Montevallo has enacted an ordinance designed to divert hazardous materials traffic to neighboring towns. While this protects the interests of a few citizens within the town itself, it increases the risk for many in the surrounding area.

ATA supports hazardous materials routing provisions presented in RSPA's Highway Routing of Hazardous Materials (HM-203). Legislation should parallel the provisions of HM-203 and eliminate the practice of state and local governments establishing routing requirements without proper consideration for safety and the impact of their actions on commerce.

Legislation should identify those materials to be regulated for routing. This information should be included in any legislation and be limited to Highway Route Controlled Quantities (HRCQ) of Radioactive Materials (RAM), Class A and B Explosives, and Materials that are Poison by Inhalation (PIH).

In its comments to HM-203, ATA stated that Federal legislation should pre-empt unilateral local restrictions on the time-of-day when hazardous materials are moved, as well as the route used.

The Department of Transportation, and in particular RSPA, must be involved in the routing process at an early stage by developing and providing specific guidelines to assist states and localities in establishing routing for hazardous materials transportation. RSPA has taken that lead through the introduction, in rulemaking, of HM-203. Routing restrictions often lead to disputes between industry

and state or local governments, and many times between neighboring jurisdictions. As a result, the restrictions are brought to the attention of the DOT by a request for a ruling on whether or not the restriction is "inconsistent" with DOT requirements. The current DOT process of issuing "inconsistency rulings" to settle disputes after routing rules have been established is inefficient, cumbersome, and results in inordinate delays in reaching conclusions.

As an example, over two and a half years ago ATA filed a request with RSPA that the New York City routing and time-of-day restrictions be found inconsistent with Federal law. RSPA agreed with ATA, but it took one year to reach this conclusion. The City promptly filed an appeal and over one year later we are still awaiting a decision from RSPA. As ridiculous as this delay is when you are trying to move materials, this situation is even more absurd when you realize that we will have to go into Federal Court to get RSPA's decision enforced.

Legislation should allow the Secretary and his respective administration authority to promulgate regulations through the rulemaking process that was begun in HM-203. Following action by the Secretary, no state or political subdivision could designate highway routes for the transportation of hazardous materials except in accordance with the standards. Therefore, we strongly support legislation which calls for rulemaking similar in nature to that appearing in HM-203.

We also agree with and support the "dispute resolution" process as proscribed in HM-203. Such regulations would favor a state that has established a hazardous materials highway route which meets Federal standards and which provides the greatest level of highway safety without unreasonably burdening commerce.

Finally, ATA strongly opposes a routing standard that would allow government agencies to specify the mode of transportation for hazardous materials.

IV. HAZARDOUS MATERIALS TRANSPORTATION FEES

The trucking industry recognizes the need for funds to improve training and equipment of responders to hazardous materials incidents and other emergencies resulting from the manufacture, storage, and transportation of hazardous materials. We are opposed, however, to the proliferation of state and local hazardous materials fees, taxes, and special permit requirements that have little or no relationship to the needs of emergency responders.

We support a carefully structured Federal fund to meet such needs provided that the source of revenue for the funds is broad-based and equitable for manufacturers of hazardous materials and hazardous materials containers, shippers, and transporters of hazardous materials from all modes. These funds should be made available to states and localities. Upon acceptance of Federal funds, those jurisdictions would be precluded from assessing like fees. We cannot support funding based on revenues derived solely from the Highway Trust Fund and other special taxes on highway transportation, since hazardous materials also move by rail, water, and air.

Attached is a document entitled "Hazardous Materials Fees - A State-by-State Breakdown", which substantiates our call to end the proliferation of state and local hazardous materials fees.

V. PRE-NOTIFICATION AND TRACKING

An estimated 500,000 hazardous materials shipments move daily in the U.S. add to this the frequent transfer of shipments between vehicles. There is no practical and cost effective way of providing pre-notification of hazardous materials shipments, or of tracking such shipments by computer. Shipments move from shipper to carrier, from one mode to another, from one vehicle to another, and from carrier to consignee. Emergency responders would be at a loss to know if the updates were made to the computer system in a timely fashion.

One of the most knowledgeable persons in the area of emergency response and hazardous materials, Mr. Steve Hermann of the Arizona Department of Public Safety and Chairman of Cooperative Hazardous Materials Enforcement and Development (COHMED), stated: "Pre-notification is an idea whose time should never come." ATA strongly agrees with Mr. Hermann and submits that there would be a potential for chaos as emergency responders tried to ascertain whether to rely on shipping paper information on the vehicle (or not on the vehicle) or on information from a tracking center.

Of the 15 deaths related to the transporation of hzardous materials in 1988 (the most recent year for which data are available), not one resulted from a lack of information about freight. The hazardous materials involved in these incidents -- propane gas, gasoline, fuel oil, and sulfer dioxide -- were clearly marked and could be easily recognized by all parties involved. The 15 deaths were caused by unintentional researses of hazardous materials. A computerized tracking system would not have prevented a single death.

As noted earlier, each day in America, there are more than 500,000 hazardous material shipments, or 183 million shipments per year. DOT's General Counsel estimates that tracking these shipments would cost the trucking industry $12.3 billion each year -- without the benefit of saving lives.

The trucking industry is committed to improving highway safety. We have fought hard for strict regulations and other measures to ensure the safe transportation of hazardous materials, including:

- o The creation of the Chemical Transportation Emergency Center (CHEMTREC), a 24-hour hotline established by the Chemical Manufactureres Association which offers immediate safety and response information;

- o Special training requirements for truck drivers and all others directly involved with the transportation of hazardous materials;

- o Stringent hazardous material placarding regulations and shipping paper requirments; and

- o The issuance of Emergency Response Guide Books and Material Safety Data Sheets containing appropriate response information.

In summary, pre-notification of hazardous materials movements and tracking of such movements is complex, cumbersome, costly, and offers very little in the way of safety benefits. ATA opposes costly, untested computer tracking of hazardous materials as proposed in S. 2318. Authority to require pre-notification should be limited to the Federal government and to hazardous materials designated by the Department of Transportation, such as spent nuclear fuel and high level radioactive waste.

VI. SAFETY PERMITS AND REGISTRATION

ATA supports legislation that would direct the Secretary to establish a system of safety permits for the transportation of any Class A or B explosives, any hazardous material which has been designated as Poison by Inhalation (PIH), or any Highway Route Controlled Quantity (HRCQ) of Radioactive Material (RAM). We believe that Safety Permitting should be applicable to all modes of transportation, but only for the most dangerous materials.

ATA acknowledges the need for discretion on the part of the Secretary in determining which materials may be included; however, we suggest that those materials specifically identified as ultra-hazardous remain Class A and B explosives, PIH materials and HRCQ of RAM.

As mentioned previously, the Safety Permitting requirement should be extended to encompass <u>all</u> modes of transportation. We think railroads should also be permitted because railroad tank cars carry larger volumes of the same materials right through the heart of major population areas. The granting of a Safety Permit should be based on the premise that a transporter meets all the requirements as will be specified in future rulemaking.

If a carrier does not prove to be a "safe" carrier, or there is the presence of "imminent hazard", that carrier would be precluded from transporting hazardous materials. ATA submits that all transporters of hazardous materials must prove their worthiness to carry these materials. Certainly, this Committee would not want to give a competitive advantage to one mode of transportation by exempting it from regulatory provisions which enhance safety. All modes of transportation must be qualified as a safe carrier of shippers' goods.

ATA supports the concept of immediately suspending or revoking a safety permit if there is a serious safety problem. A desirable standard for this is established by the definition in the "Motor Carrier Safety Act of 1984," which states:

> "imminent hazard means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately." (49 USC 521 (b)(5)(B).

The revocation of a permit must be based upon a condition that is <u>now present and not on a condition that could happen</u>. ATA submits that it should be sufficient to place a specific vehicle out-of service until such time as the problem is mitigated. The Safety Permit for the entire operation should not be affected because of the problems of one vehicle. Criteria for the issuance or revocation of a Safety Permit should be based solely upon a present condition that would adversely affect human health or life.

Therefore, ATA recommends the definition be revised to read:

> "imminent hazard means any condition of equipment, employee, or transporter operations which is likely to result in serious injury or death if not discontinued immediately."

ATA feels that this definition better encompasses all modes of transportation, instead of limiting it to motor carriers as the FHWA definition does.

ATA has supported the utilization of a safety permitting system in the past and continues to support its use as a means of ensuring the safe transportation of hazardous materials. Safety permits should substantially eliminate unqualified persons from transporting, shipping, or handling hazardous materials and/or the containers. Annual registration would provide a remedy to the problem of pre-notification by establishing a base of commercial entities for the purposes of identifying transportation corridors and product information.

The combination of the Safety Permit and Registration effectively eliminates the need to rely on Motor Carrier Safety Ratings as a determinant of who should be allowed to transport hazardous materials. The Motor Carrier Safety Rating is basically a system utilized by the Federal Highway Administration to help them allocate their resources to the problem areas and educate carriers. As such, the Safety Rating is not designed as a punitive tool utilized to revoke a carrier's operating privilege. It merely identifies carriers which are experiencing some sort of operational problems.

The FHWA then utilizes the criteria for "imminent hazard" from the Motor Carrier Safety Act of 1984 before suspending carrier operations. That criteria is based upon the fact that a situation exists that, if not stopped immediately, would result in death or injury. ATA believes the use of the Motor Carrier Safety Rating is inappropriate because the Safety Rating merely provides FHWA with a group of carriers to focus their attention on.

In addition, ATA would oppose the inclusion of this language in the Hazardous Materials Transportation Act because the Safety Rating System only affects motor carriers and leaves the other modes of transportation without comparable administrative procedures.

VII. OTHER AREAS OF CONCERN

PLACARDING REQUIREMENTS

Recently, there has been a call for changes in the placarding system as now prescribed in the regulation. Recommended changes to the system include larger placards, lowering or complete elimination of the 1,000 pound threshold for placarding of Table II materials, revamping of the identifier for materials that are poison by inhalation, and others. ATA agrees that there is a need for some updating of the present regulations.

In fact, ATA has petitioned RSPA for the creation of a specific placard for those materials identified as Poison Inhalation Hazard. However, the regulations have to be viewed as a system based on an extensive series of trade-offs that has been developed into a workable whole over the years. Any mass reworking of the placarding section would trigger numerous other problems in other sections of the regulations. Millions of dollars in training and training aids would be worthless. Motor Carrier Safety inspectors would need to be retrained and years of experience with the present system would be

lost. ATA questions whether or not the perceived gains would counteract the known losses and urges Congress to take a good, hard look at changes to the system.

Furthermore, drastic changes to the placarding requirements would cause problems on the international front. Materials shipped to or from the U.S. would be required to be placarded in accordance with international standards. At this time, U.S. regulations work well within the scope of international movements, as placarding size and requirements are relatively consistent. ATA opposes any effort to upset this relationship when we are in a time when the world is calling for more uniformity in a complex set of regulations.

ATA suggests, therefore, only minor changes and updates be made to the placarding regulations and submits that there is no great, pressing need for radical regulatory surgery in this area.

DOCUMENTATION AND TRAINING

Regulations governing documentation required to accompany hazardous materials shipments, or to be available at fixed facilities where hazardous materials are shipped are comprehensively addressed in RSPA's Emergency Response Communications Standards (HM-126C). ATA

believes that there is no need for duplication of this effort in any new legislation as rules are already in place.

Likewise, RSPA has already begun the process of rulemaking in the area of Training for Hazardous Materials Transportation (HM-126F). HM-126F is a very extensive and detailed rulemaking that is already taking shape through the rulemaking process. Comments from industry on the Notice of Proposed Rulemaking HM-126F are being formulated and forwarded to RSPA. ATA suggests that RSPA should be allowed to complete its rulemaking process .

FINES AND PENALTIES

ATA believes that legislation proposed should not include a minimum fine per violation. However, legislation should allow states to participate in investigations, surveillance, and enforcement actions against motor carriers and railroads.

To propose a minimum fine sends a signal out to every enforcement agency throughout the United States which is currently involved in the enforcement of the Hazardous Materials Regulations (HMR) that it is imperative they assess that amount for each and every violation noted. That means, for every placard that may be

dirty or every shipping paper that has a transposed identification number, there would be a fine, such as $250, assessed. This is incredulous and beyond the scope of necessary and efficient enforcement of the regulations. ATA suggests that the minimum fine provisions not be included in proposed legislation.

The second problem is the inequity in enforcement and fine assessment capabilities. Legislation should not allow a state agency to take enforcement action against a motor carrier, but strictly prohibit that same state agency from assessing any enforcement penalties against a rail carrier. If a particular state is qualified to conduct investigations and surveillance operations against both modes, why should that state not be allowed to assess penalties against both? We believe that there has long been inequity in the enforcement of regulations regarding motor carriers versus rail carriers. ATA suggests that legislation proposed by this Committee should remedy this situation.

States should have the same ability to enforce regulations and impose fines for railroads as they currently have for trucks. Any legislation should make clear that a state that adopts hazardous materials regulations for railroads that are consistent with the Federal regulations can enforce those regulations itself without case-by-case involvement by the Department of Transportation.

ATA does support the language in HR. 3520, introduced by Congressman Luken, that states:

> A state or political subdivision....may not levy any fine, penalty, or fee in connection with the regulation of the transportation of hazardous materials that is not reasonable and used exclusively for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

We feel that this will aid in stopping the proliferation of unneeded and unrelated fees and fines. This language should be incorporated into any legislation considered by this Congress.

INCIDENT REPORTING

The Federal government should have the sole authority to require reports on hazardous materials incidents. This authority is necessary to collect and compile accurate data that is needed nationally, and to avoid duplication of reporting to numerous agencies throughout the nation. Federal reporting requirements should pre-empt state and local requirements, except when immediate notice is required for emergency response. The Federal government's data collection and analysis should be designed for use by state and local governments as well as industry.

APPLICABILITY

ATA believes that no transporter of hazardous materials in commerce should be specifically exempted from the Hazardous Materials Regulations. Such exemptions not only subverts the safe transportation of hazardous materials, but gives those exempted from regulations a distinct competitive and economic advantage over its major competitors in the motor carrier industry.

ATA suggests that no carrier of hazardous materials be exempted from the provisions of the Hazardous Materials Transportation Act.

FLOW STUDIES

It is apparent that information concerning the flow of hazardous materials shipments by transportation mode and highway routes is needed before a determination of emergency response funding and traininog needs can be made. ATA would support such provisions, instead of the helter-skelter approach that now exists. We believe that regional flow studies should be conducted and Congress should authorize funding necessary for such studies so that needs can be properly assessed.

SUMMARY

In summary, ATA believes all commercial transporters of hazardous materials should be subject to the provisions of the Hazardous Materials Transportation Act.

ATA supports language granting sole authority to the Federal government for technical standards which govern preparation of shipments, container standards, and hazard communication standards which are essential for safety and promote compliance through uniformity.

ATA supports the provisions of HM-203, with modifications in the area of routing standards for hazardous materials transportation. Legislation should address those commodities which would fall under the routing requirements.

ATA supports the creation of a Federal fund to be utilized in the training and equipping of those persons who respond to hazardous materials incidents. The fund should be derived from fees paid from a broad based source to include manufacturers, shippers and

transporters of hazardous materials from all modes. Acceptance of moneys from the fund by States or localities would preclude them from assessing like fees.

ATA does not support pre-notification of transportation of hazardous materials, either through electronic means or any other method. We submit that it is much more dangerous for an emergency responder to depend on a printout from an electronic tracking system instead of on the information he has in hand.

ATA agrees with the concept of safety permits with revocation or suspension of such permits based on "imminent hazard". Along with the Safety Permit guidelines, Registration of those entities with a substantial involvement in the transportation of hazardous materials is needed to assure only qualified persons, as defined, are part of the hazardous materials system. With the combination of Safety Permits and Registration, there is no need to include Motor Carrier Safety Ratings in the overall scheme in determining who should be allowed to transport hazardous materials

ATA does not support drastic change to the current placarding requirements. Placarding is only part of the entire system of communicating hazards to the emergency responder, and is not meant to be a tell-all message board on the outside of the transport vehicle. Only when all the components are put together, can an emergency responder make the correct determinations to bring the situation to a safe and acceptable conclusion.

ATA supports the need for proper training for the transportation of hazardous materials. With modifications, ATA feels assured that RSPA's Training for Hazardous Materials Transportation docket will effectively address training needs for the transportation industry..

ATA supports the need for guidelines in documentation needed for proper mitigation of emergency situations. RSPA has issued its final rule Emergency Response Communications Standards dealing with this matter. ATA believes that legislation concerning emergency response should parallel present regulations.

ATA suggests that minimum fines not be included in legislation because of the precedent they would set for states in their enforcement programs. Also, states which are allowed to conduct investigations and surveillance activities against rail carriers should be allowed to take enforcement action against those carriers.

ATA supports the need for flow studies to be conducted in order to determine regional needs for hazardous materials emergency response training.

In closing, I wish to assure you of ATA's continued commitment to the safe transportation of hazardous materials on our nation's highways. We offer our support for passage of the reauthorization of the Hazardous Materials Transportation Act in this session of Congress. I will be pleased to answer any questions.

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August 6, 1990

The Honorable Ernest F. Hollings
Chairman
Commerce, Science
and Transportation Committee
United States Senate
SO-508 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Hollings:

The following are ATA's responses to the questions attached to your July 24, 1990 letter on the negotiated rates issue. I hope this information is helpful and I thank you for the opportunity to respond to these questions:

Changing Statute of Limitation for Over- and Undercharge Claims

1) **Question:** The testimony of two witnesses on Panel #1 suggested that changing the statute of limitations applicable to over- and undercharge claims is unnecessary to accomplish the legislative relief needed to address the negotiated rates matter. Do you believe such a change in the statute of limitations is critical to the enactment of legislation, and if so, why?

Answer: There are several reasons why the proposed reduction in the statute of limitations on over- and undercharge claims is critical. First, if no other change in the law were made than the reduction in the statute of limitations from thirty-six to eighteen months would, by definition, the number of claims should be reduced by 50%. Second, aside from the negotiated rates issue, there is no justification for the three year statute of limitations. If carriers and shippers engage in timely auditing of freight bills, then even the proposed 18 month period is unnecessarily long. We note that NASSTRAC originally proposed reducing the statutes to six months. The eighteen month period was agreed to by all carrier interests involved and the major shippers' organizations. Those opposing it basically represent auditor interests. The reduced statute would require auditors to hire sufficient and capable staff to perform an accurate audit the first time and would

discontinue the practice of multiple audits of the same freight bill stretching over a three year period. The administrative expense to carriers or shippers of such audit practices is unreasonable and unjustified. Finally, the support of ATA for the proposed legislation is conditioned on the inclusion of this provision.

Scope of Legislative Remedy

2) **Question:** You suggest that the unfiled rate problem is the result of years of neglect by past ICC administrators which permitted carriers and shippers to ignore the tariff filing requirements of the statute. What improvements do you suggest the ICC undertake to make the filing system more workable?

3) **Question:** What enforcement action by the ICC do you believe is necessary to ensure that the current situation does not recur?

Answer: These two questions can be answered together. The ICC administrators during the 1980 failed to bring even one proceeding to enforce the tariff requirements of the Act. Even after the NITL and others brought the unfiled rate problem to the Commissions attention and ATA and other urged the Commission that the best way to prevent the problem would be to enforce the tariff filing requirements, the ICC continued to ignore the cause of the problem.

There are several steps that the agency could take to improve the tariff filing system and make it more workable: Enforce the law; Go forward with its proceeding to bring about electronic tariff filing.

The past ICC administration attempted to use this proceeding to implement its desire to eliminate the tariff filing rules rather then to modernize them. The Commission should create an Advisory Committee, made up of agency, carrier and shipper representative which could determine the needs, procedures and standards required to implement electronic tariff filing. Electronic tariff filing would enable a carrier and shipper to agree upon a tariff rate; the carrier to file it electronically; and to have the new rate effective just one day later. The system would also enable shippers to have ready access to the Commission's tariff files to determine whether a carrier's rate were or were not on file.

4) **Question:** Do you feel that discriminatory pricing now exists in the trucking industry? If so, would the enforcement of filed rates curb these practices?

Answer: Because many rates are not filed and others are filed in such manner as to make it impossible for a third party to determine who they apply to, it is impossible to determine the extent to which discrimination may be occurring. The Supreme Court recognized in Maislin that the filed rate doctrine is the keystone to the entire Act and the principal purpose of the Act was to prevent discrimination. Thus, if the filed rate doctrine and other tariff filing requirements were enforced by the ICC, it would undoubtedly do much to prevent rate discrimination.

5) **Question:** What is the total amount of money at stake in trucking bankruptcies around the country where freight undercharges are either the main or sole asset of the estate?

Answer: ATA does not have the information to answer this question.

I hope these answers of some help to you in clarifying ATA's position on the negotiated rates issue and in possible solutions to the problem. ATA has been an active party in working with other carrier and shipper groups in seeking a solution to this problem and we are a strong advocate of the proposed legislation as it pertains to this issue.

In spite of the importance of finding a workable legislative solution to this problem, ATA is very concerned with Section 6, which would have a detrimental effect on the even more paramount issue of highway safety. This provision would enable states to exempt commercial vehicles merely because they are transporting farm supplies or equipment, a factor which does not excuse the need for safe operation of such vehicles, is unacceptable to the trucking industry and is not a part of the legislation agreed to by the affected parties. We urge its removal.

Respectfully submitted,

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July 27, 1990

The Honorable J. James Exon, Chairman
Surface Transportation Subcommittee
Senate Commerce, Science, and Transportation Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for giving the American Trucking Associations the opportunity to testify Wednesday, July 25, 1990, on the important topic of reauthorization of the Hazardous Material Transportation Act. ATA strongly supports reauthorization and believes that the changes we suggested in our written and oral testimony will improve the safety of our highways.

Following are the answers to your questions:

> Question #1: In your testimony, you indicated that there were areas in which there is inequity in enforcement against motor carriers versus rail carriers. Would you care to comment further on the need to remedy this situation?

Answer: The principle areas of inequity are in state inspections and state fees.

Inspections

Since 1984, the Motor Carrier Safety Assistance Program (MCSAP), a Federal/State partnership for the inspection of commercial vehicles, has played a major role in improving highway safety and increasing motor carrier industry compliance with safety regulations. From a meager beginning of 159,000 roadside inspections and 114 carrier reviews in 1984, MCSAP produced an astounding 1,302,453 roadside inspections and 10,233 carrier reviews in 1989.

Tied closely with MCSAP is the Commercial Vehicle Safety Alliance (CVSA), which is an alliance of States, the Federal Government, 6 Canadian Provinces, and the motor carrier industry. Specifically, CVSA's mission is to develop criteria for the inspection of commercial vehicles. Through the efforts of CVSA and MCSAP, the motor carrier industry in North America is subjected to intense scrutiny on a daily basis. The American Trucking Associations (ATA) has been, and will continue to be, a staunch supporter of both programs because they have forced the motor carrier industry to react positively to the pressures applied by all of the government entities to improve safety.

On the other hand, what pressures are there for the railroads to improve safety? According to the Federal Railroad Safety Act (FRSA), the Federal Railroad Administration has sole authority to regulate the transportation of hazardous materials by rail. In May 1989, FRA employed a nationwide staff of 28 inspectors to examine an estimated 85 railroads and 15,000 shippers utilizing 100,000 tank cars. With 1.1 million annual carloads of hazardous materials, each inspector would have to examine over 39,000 cars/year, or 157 cars/day. Unfortunately, last year all FRA inspectors only visited 30 percent of the facilities and inspected only a total of 67,000 hazardous materials railcars.

Railroad officials claim with state enforcement States will impose inconsistent regulations and exorbitant fines. ATA suggests that this has not been the case with MCSAP and will not be for the railroads. Although there have been minor problems, most were due to a lack of training on the part of the inspectors and not the intent of the State. MCSAP, CVSA, and ATA have found that with proper, standardized training of inspection personnel, virtually all problems connected to inspections can be resolved.

The lack on state inspections shows up in the dismal railroad statistics on hazardous materials. In 1989, U.S. Department of Transportation (DOT) cited a 16 percent increase in reports of leading tank cars nationwide.

Fees

In the area of fees, motor carriers are subject to state and local fees which fund emergency responders. However, the same Federal law which restricts state inspection of railroad cars also restricts the assessment of state fees against railroads. As a result, motor carriers are not only faced with the inequity of paying while the railroads do no, but also face two hidden inequities:

(1) the railroads are not faced with the administrative costs of complying with the myriad of state and local fees; and

(2) motor carriers subsidize the emergency personnel who respond to all accidents, including railroad accidents.

The fact that railroads do not pay these fees is ironic when one notes that DOT reports the average railroad hazardous material spill costs $8,689 compared with the average $2,252 in highway releases. Moreover, the cost of a rail hazardous material spill resulting in an evacuation was $225,526, compared with $19,898 for a truck accident causing an evacuation. Finally over the past ten years, the railroads have generated twice as many injuries per hazardous material spill as have trucks.

In conclusion, six years of MCSAP has not caused the demise of the motor carrier industry; rather the industry has witnessed a resurrection in terms of reliability and safety. ATA believes that states must be allowed to become involved in inspection activities for rail carriers for the sake of safe transportation in all modes, and for equal treatment of all carriers. In addition, we believe all transporters of hazardous materials should pay for the training and equipping of emergency responders.

Question #2: Two pending measures, H.R. 2584, introduced by Congressman Applegate, and S. 2318, introduced by Senator Metzenbaum, would require the establishment and use of a national computer system to register the movement of all hazardous materials. Would any of you care to comment further on the need and costs associated with these proposals?

Answer: ATA firmly believes that the costs associated with such a system grossly overstate the need or safety benefit. In the last two years, there has not been a death of an emergency responder to a transportation incident. Additionally, none of the deaths recorded were caused by lack of product identification. Actually, most deaths were instantaneous due to fires and/or explosions at the time of the accident and could not have been prevented through the use of a computer manifesting system. The estimated costs of between $2-12 billion dollars are too high for such an untested and unstudied alternative to the current system.

Question #3: Other than what has been proposed in legislation, how do you believe the Federal government might improve its assistance to states and localities, particularly in terms of information and resources to better respond to transportation incidents involving hazardous materials?

ATA believes the best way to address the training needs of emergency response personnel is through the creation of a Federal fund. Fees established for this fund would be broad-based and funded by all modes of transportation, manufacturers, and shippers of hazardous materials. The fees should be reasonable and graduated to reflect the differing risks among hazardous materials. All fees collected would be used solely for the training and equipping of hazardous materials response personnel and would be specifically directed to replace state and local hazardous materials fees, permits, and registrations.

This system would standardize funding mechanisms for hazardous materials training and would furnish the Federal government with a feel for training needs. States would benefit because there would be a source of funding and training available to them where at this time there may not be.

Also, this system would significantly help motor carriers in several ways:

- With only one fee to pay, the chance of noncompliance is diminished; and
- Motor carriers would not bear the entire burden of financing hazardous materials response activities where rail and manufacturers are concerned.

Question #4: What are your views on the need for a Federal safety permit requirement for hazardous materials presenting a high degree of risk with the cost of maintaining such a system being born by the carriers?

Answer: ATA supports the need for a Safety Permit for all carriers of Highway Route Controlled Quantities of Radioactive Materials (HRCQ-RAM), Explosives A and B, and those hazardous materials which are Poison by Inhalation (PIH). As long as all modes of transportation are required to be permitted, ATA has no objection to carriers bearing the cost of system maintenance. There is a safety benefit to be derived from this system, and that is there will only be qualified carriers transporting high hazard materials.

Sincerely,

Lana R. Batts

Lana R. Batts
Senior Vice President
Government Affairs

BEFORE THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

In the matter of:

REAUTHORIZATION OF THE HAZARDOUS MATERIALS
TRANSPORTATION ACT OF 1974

Statement of:

National Tank Truck Carriers, Inc.
2200 Mill Road
Alexandria, VA 22314
(703) 838-1960

Clifford J. Harvison
President

July 25, 1990

Mr. Chairman and members of the Committee, thank you for the opportunity to participate in today's hearings.

As you might presume from the name of our trade association, the members of National Tank Truck Carriers (NTTC) are involved, extensively, in the bulk transportation of hazardous materials, hazardous substances and hazardous wastes.

We respectfully submit that trucking's changing marketplace (irrevocably altered by deregulation) plus growing public sensitivity to the safety and environmental consequences of "hazmat" transportation has made the 1974 Hazardous Materials Transportation Act (HMTA) "legislatively obsolete".

Without going into time-consuming detail, suffice it to say that our Association supports substantive amendments (to the HMTA) which would accomplish the following objectives:

1) Proscribe more effectively the areas of regulatory jurisdiction between the Federal Department of Transportation and the regulatory powers of State and local governments;

2) Impose a structured process for the resolution of routing disputes;

3) Provide better and more timely monitoring of the operational safety records of "hazmat" carriers--particularly those carriers which transport so called "high hazard" commodities, in bulk;

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4) Develop a broad-based funding system, the proceeds of which can be used to train emergency response personnel--and, of equal importance, blend transportation emergency response programs with similar programs created by Congress under the 1986 Superfund Amendments and Reauthorization Act; and

5) Correct the most flagrant weakness in the 1974 HMTA by creating statutory sanctions against shippers who knowingly utilize the services of unsafe carriers to transport hazardous materials.

Mr. Chairman, please allow me brief elaboration on that last point.

Today, the manufacturer of hazardous materials--in its role as "shipper"--controls the most essential element of transportation safety, namely, carrier selection. If that company utilizes tank truck companies with proven, positive safety records, the public benefits. If the shipper is willing to "settle for something less", it is the public which (eventually) suffers the consequences.

Regrettably, there are tank truck carriers in the marketplace who will provide "less." They don't train their drivers, they don't maintain their equipment and they don't comply with existing regulations. These carriers remain in the marketplace for one simple reason; that is, some shippers continue to use them.

Regrettably, the use of unqualified carriers is practiced by some major energy and chemical shippers who defend their actions on the bases of "marketing arrangements" or "customer pick-up" transactions. In effect, they deny their role as a "shipper" because the product is "sold" prior to transportation.

The HMTA can be--and should be--amended to provide for direct sanctions against shippers who fail to exercise due diligence in selecting tank truck carriers to haul "hazmat". Furthermore, the law should specify that a "shipper" is the person "...who owns or operates the facility where hazardous materials are put into an authorized container for the purposes of transportation."

We believe that such amendments would end the hypocrisy of third party marketing arrangements which compromise safety.

Mr. Chairman, thank you for the opportunity to testify, today, and I will be pleased to attempt to respond to any questions.

Respectfully submitted:

Clifford J. Harvison
President
National Tank Truck Carriers, Inc.

Senator EXON. Ms. Batts, Mr. McCurdy, Mr. Morgan, and Mr. Dempsey, we thank you very much for your excellent testimony.

I must tell you and the two panels that are going to follow that we have all kinds of complications this morning, out of the control of the Senator from Wisconsin and myself.

We are members of the Budget Committee and in 3 minutes the Budget Committee is going to have a series of very important mark-up votes that we must go and attend. Then, shortly after noon we have a series of votes starting on the floor of the Senate.

We think it is best for all to have any questions of this panel, that they be submitted for the record. You can respond as quickly as you can.

We will recess now since we have to go over to the Budget Committee. Hopefully, one or both of us can return here by 11:45, in about 15 minutes. Then we will call panel 2 and panel 3 and move forward as quickly as we can.

In addition to all the other problems, there is another meeting scheduled here at 1:15. So you can see that we have problems. We will solve them.

We will stand in recess subject to the call of the Chair.

(Brief recess.)

Senator EXON. The subcommittee will please come to order. Let me call on panel number 2. Mr. Raymond C. Scheppach, Executive Director of the National Governors' Association, Hall of States; Mr. Lawrence Mann, Alper & Mann of Washington, DC; Mr. Vernon MacDougal, Acting Director of Safety and Health, International Brotherhood of Teamsters.

I apologize to this panel. I had hoped to be back 15 minutes ago, but I did not make it. I do hope that we can expedite things on the best order. We have already accepted the full written testimonies.

And I now would call upon Mr. Scheppach for his comments and remarks.

STATEMENT OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION

Mr. SCHEPPACH. Thank you, Mr. Chairman. The National Governors' Association applauds your efforts to update the Committee's record on hazardous materials transportation. To save time, I will submit the full statement and summarize it very briefly.

Over the last 15 years, in the absence of comprehensive Federal legislation, states have taken additional responsibilities in enforcement, emergency response, and training. For the most part, state programs have been effective. Yet, the resulting patchwork of responsibilities must be addressed. We need clarity of roles, better coordination of effort, and more effective use of both public and private resources. Congress must also inspire confidence in Federal programs focusing on interagency coordination, consistent policies, and stable funding.

Although the governors generally oppose preemption of state authority, they know that national uniformity sometimes is in the national interest. Many of the current proposals call for Federal preemption of many states' safety regulations. As you consider legislation in this area, let me just raise three cautions.

First, states need to be able to set more stringent safety requirements when specific considerations warrant it. Second, states question the need to preempt intrastate regulation of hazardous material shipments. And third, in determining whether state laws should be preempted, state regulations should be made consistent with, not identical to, Federal regulations. The process should not suspend state enforcement of a challenged state law or collection of a disputed fee while awaiting a final ruling.

The desired goal of greater national uniformity and better coordination usually can be achieved without Federal preemption. In enforcement, routing, training and emergency response, states have a dominant or leading role and would oppose efforts to limit their flexibility.

The following are three additional areas in which clarity of roles in a context of shared responsibility and authority is needed. First, on enforcement, governors call for full state participation and full funding of the Motor Carrier Safety Assistance Program. Additional Federal financial and technical support would allow states to improve training of state and local enforcement personnel.

On routing, governors oppose a process of designated routes that does not actively seek participation of states, which are in the best position to determine safety and other special considerations involving routing decisions.

On emergency response, states must assume the lead role. Any efforts to design curriculum standards should involve states. States would oppose efforts to superimpose additional organizational mechanisms on their existing structures.

With respect to funding, NGA calls for the establishment of a Federal fund to provide a stable, assured source of revenue for financing programs related to administration, planning, training, equipment, enforcement, emergency response, research, and data collection. Revenues should be fully allocated to the states for implementation.

Current proposals would call for a registration program to be funded by a user fee on carriers. Such a program would be an important part of the national effort. However, a Federal program cannot be considered as a substitute for other efforts. Congress should resist suggestions that a Federal effort can replace state and local initiatives. And a user-fee-funded program should build upon existing state programs and should not preempt states from collecting their own fees. Given the scope of the problem and the potential risks to public safety, the situation calls for a both/and rather than an either/or approach.

In conclusion, it will take a major commitment on the part of both government and industry alike to resolve this modern dilemma. We look forward to working with you over the next few weeks as you develop your final legislative proposal. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RAYMOND C. SCHEPPACH, ON BEHALF OF THE NATIONAL GOVERNORS ASSN.

Good morning, Mr. Chairman. I appreciate the invitation to come before you today to discuss state concerns related to hazardous materials transportation legislation. The National Governors' Association (NGA) applauds this effort to update the committee's record on the subject and to solicit views on current proposals.

We all recognize the potential problems posed by the transportation of hazardous materials. Recognizing the risks that hazardous materials can pose, we also must realize the important contributions they make to our nation's economy and to our high standard of living. Any attempt to address problems in this area should balance a commitment to public safety with continued support for economic growth.

It is clear that national leadership is needed. Over the last fifteen years, in the absence of comprehensive federal legislation, states and others have had to take additional responsibilities. States have set up innovative and effective programs to address enforcement, emergency response, and training needs. For the most part, these policies and programs have been effective, and the vast majority of hazardous materials are transported safely. Yet the resulting patchwork of responsibilities of federal, state and local governments must be addressed to ensure the efficient as well as the safe transportation of hazardous materials. We all are faced with a matrix of overlapping jurisdictional responsibilities, institutional complexity, and program-specific laws and regulations.

The value and quality of existing efforts by state and local governments and the private sector can provide Congress with a blueprint for action, as it exerts national leadership at the federal level. A radically new approach is not needed. Instead a strategic assessment, emphasizing clarity of roles, better coordination of effort, and more effective use of public and private resources, is called for. Congress also must take the initiative to inspire confidence in federal programs, focusing on better interagency coordination, consistent policies, and stable funding mechanisms.

For some time, NGA has held that states and the federal government should jointly examine how federal, state, and local governments, along with the private sector, can work together to more effectively regulate and manage hazardous materials transportation. States recognize that certain responsibilities are exclusively the province of the federal government. Others are better handled by the states. Still other functions can be dealt with most effectively only through shared and coordinated responsibility.

Federal Responsibility

It is true that Governors generally oppose preemption of state authority. However, Governors also recognize that national uniformity in specified areas sometimes is in the nation's interests.

NGA policy stipulates, for example, that the federal government should have the sole responsibility for regulating and approving packaging for transport. This includes container design and construction standards, and packaging and labeling specifications. It also specifically mentions that regulation of placarding -- the identification of transported materials -- is a prime federal responsibility.

Many of the current proposals call for federal preemption of state placarding, packaging and handling requirements, and other safety regulations. I would just point out three unresolved matters in this regard:

- States need to retain the ability to set more stringent safety requirements when specific safety considerations warrant doing so.

- States still have questions about the need to preempt intrastate regulation of hazardous materials shipments.

- The preemption process itself is still the subject of much debate. In determining whether state laws would be preempted, state regulations should be made "consistent with" -- not "identical to" -- federal regulations. The process should not suspend state enforcement of a challenged state law or collection of a disputed fee while awaiting a ruling. In addition, states should not be restricted from seeking recourse in the courts during a review period.

In revising and expanding federal regulations, please keep in mind that the scope and complexity of regulations often diminish their effectiveness. Enforcement officials say they need regulations they can use -- rules that have continuity, that are clear and understandable. Industry groups have complained that enforcement often seems arbitrary and inconsistent. Simplified regulations would help address these concerns and improve overall safety efforts.

Shared Responsibility

Aside from administrative regulations, there are many other areas in which the desired goal of greater national uniformity and better coordination can be achieved without federal preemption. In enforcement, routing, training, and emergency response, states have the dominant or leading role and would oppose efforts to limit their flexibility. However, states can work with each other, with the federal government, and with the private sector to achieve national goals.

An excellent model of voluntary state efforts to work toward a national goal is the process undertaken by the NGA Working Group on State Motor Carrier Procedures. This project led to greater uniformity in state registration and fuel tax practices and procedures, reducing the administrative compliance burden on the motor carrier industry. Eighteen states now participate in a base-state fuel tax agreement, and others soon will be joining. Forty-three states have joined the International Registration Plan, allowing base-state licensing and registration of motor carriers.

Perhaps a similar group could undertake the responsibility for recommending uniform approaches to permitting and registration of hazardous materials transportation. A state working group also could identify information needs. For example, it could look at the composition of the overall governmental fee structure for hazardous materials. This is a subject of particular importance in determining the cost burden to industry, though good solid data for decisionmaking is not available.

The following are additional areas in which clarity of roles is needed. States have key responsibilities in each. States seek a more effective partnership among governments and with the private sector.

- o Enforcement. States are responsible for ensuring safe, efficient travel on the nation's highways. Governors have called for full state participation and full funding of the Motor Carrier Safety Assistance Program (MCSAP), which has substantially upgraded the number and quality of inspections. This has effectively established a national minimum level of enforcement. Additional federal financial and technical support would allow states to improve the training of state and local enforcement personnel to ensure compliance with hazardous materials regulatory requirements.

  In cooperation with the U.S. Department of Transportation, NGA developed a Guide for Governors on Hazardous Materials Transportation Regulation and Enforcement Programs. The guide sorts out federal, state, and local responsibilities in hazardous materials enforcement and profiles selected state programs. The federal government has recognized that states can more effectively conduct highway inspection and enforcement activities. To help states, the Guide presents examples of state legislation that have instituted a simple, efficient, administrative process to deal with violations, and have resulted in improved regulatory compliance.

Driver qualifications and licensing for commercial drivers and hazardous materials transporters are essential components of national and state safety strategies. The states are coordinating with each other and the Federal Highway Administration to ensure compliance with the requirements of the commercial driver license program.

- **Routing.** Clearly, national routing standards would be helpful. However, the Governors oppose a process of designating routes that does not actively seek state participation. Decisions to select routes for the transportation of hazardous materials must involve consultation with the states, which are in the best position to determine safety and other special considerations.

- **Training.** Education and training programs are needed at every juncture, whether to train the worker who loads the shipment, the driver who transports materials, the official who inspects the vehicle, the responder who handles an incident, or the analyst who evaluates accident data.

  Training and retraining are ongoing needs, particularly in communities that rely heavily on volunteers. Therefore, an adequate and consistent commitment from all levels of government and from the private sector is required to address the coordination of training programs. Many states have launched their own training initiatives. For example, in the area of emergency response, a number of state training institutes rival federal efforts. Such state-level initiatives must be recognized as essential, viable contributions and should be integrated into the development of any national training strategy.

- **Emergency Response.** States must assume the lead role in developing effective state and local government response plans and capabilities. Federal programs -- whether dealing with response to hazardous materials incidents or developing training programs for first responders -- should recognize and rely on established state structures. All states have established state emergency response commissions and local emergency planning committees under the Emergency Planning and Community Right to Know Act (Superfund's Title III), but there is no federal financial support for the significant planning requirements for states under that statute.

  Comprehensive training programs for emergency response personnel should be geographically accessible and should include first responders, technical experts, and incident managers. Any efforts to design curriculum standards should involve states.

  As is the case in other areas, institutional frameworks already are in place in most states that potentially can accommodate any new, more coordinated national policy objectives. States would oppose efforts to superimpose additional organizational mechanisms on their existing structures. This would be duplicative and wasteful of scarce governmental resources.

Data Collection

Evaluation and coordination of information collected is essential. Any new data requirements should supplement the substantial amount of information already being collected for multiple purposes, including Title III.

Better and more efficient ways of collecting comparable data must be found. For example, NGA has developed a truck accident report form that may prove very effective in systematically collecting data on truck accidents, including those accidents involving hazardous

materials. There is a national need for adequate and accurate data for problem identification and evaluation, but such data also are very important as states assess program effectiveness.

Some members of Congress have proposed a comprehensive database to assist emergency responders. Estimated costs for such a database raise questions about the efficiency of funding this approach, especially given the considerable demand for resources in other important areas. Closer examination and study of this proposal is needed.

As we look to the future, our knowledge base, as well as the programs themselves, can be improved not only through the collection of existing information, but also through innovations, technological improvements, and efficiencies yet to be realized. Truck technology is changing, roadway/vehicle compatibility issues are being explored, and response techniques and equipment are becoming more sophisticated. While we cannot expect that technology will provide a complete solution to the hazardous materials transportation problem, we cannot ignore the value of investing in research and analysis. The states and the federal government can guide technological change toward improving safety through participation in research and development initiatives.

Funding

As for financing, we all can agree that it is a pressing problem facing government at every turn. Achieving effective enforcement, preparing for adequate response, and collecting sufficient data require funds in a time of constrained resources. States are prepared to do their part, recognizing that every level must step up its efforts.

NGA calls for the establishment of a federal fund to provide a "stable, assured source of revenue for financing programs related to administration, planning, training, equipment, enforcement, emergency response, research, and data collection. Revenues to finance the fund should include a special user fee assessed on the full array of shippers and carriers of hazardous materials, as well as container manufacturers and reconditioners." Revenues should be fully allocated to the states for implementation of programs.

Current proposals would call for a registration program to be funded by a user fee on carriers. Such a program would be an important part of a national effort to address hazardous materials transportation needs. However, a federal program cannot be considered as a substitute for other efforts. Congress should resist suggestions that a federal effort can replace state and local initiatives. Any user-fee funded program should build upon existing state programs and mechanisms and should not preempt states from collecting their own fees. Given the scope of the problem and the potential risks to public safety, the situation calls for a "both...and," rather than "either...or," approach.

In conclusion, the challenge we face in the area of hazardous materials transportation is perhaps unequaled in scope and complexity. It will take the steadfast commitment of both government and industry alike to resolve this modern dilemma.

Senator EXON. Thank you, Mr. Scheppach, very much. As a former very active member of the National Governors' Association, I appreciate your coming over to testify this morning and I assure you we will be working closely with you and the Governors' Association and certainly Governor Kay Orr of my State of Nebraska, who is chairman, I believe, of the committee on Transportation, Commerce, and Communications. Is that not correct?

Mr. SCHEPPACH. That is correct, Mr. Chairman.

Senator EXON. So we certainly need your input and your advice.

I would like to make it a part of the record, at this point, a letter to me as Chairman of the Subcommittee, dated October 16, 1989, from Governor Orr, as the Chairman of the Governors' committee on Transportation, Commerce and Communications. And I would note with interest therein that it is a policy of that committee of the Governors' Association that endorses the concept of moving ahead in this area. They suggest therein revenues to finance the fund should include a special users' fee, assessed on the full array of carriers and shippers of hazardous materials as well as the container manufacturers and reconditioners. These revenues would be collected by the Federal government and fully allocated to the states for implementation of the programs.

So with that note, and without objection, Governor Orr's letter is made a part of the record. Thank you for being here.

Mr. Mann, welcome to you. You have been here before our Committee many, many times. It is always good to see a familiar face. I am delighted to recognize you at this time for your statement.

STATEMENT OF LAWRENCE M. MANN, ON BEHALF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. MANN. Thank you, Mr. Chairman. Mr. Chairman, you wanted to get back to basics on this issue. I would like to talk to you about some basics.

First, it may surprise you that these hazardous materials trains that are running through the country are not being inspected by trained employees. What is happening is that the railroad industry

is requiring the operating crews to perform the tests and inspections that are mandated by all of the various safety laws and regulations. The train crews certainly could be trained and qualified to do it but they are not. Historically, the technical, detailed, inspections were performed by car inspectors who had two thousand hours of training prior to performing the required tests and inspections.

Therefore, we have a situation where if the trains were properly inspected and tested, you would not have as many derailments as we have today. And, of course, with derailments you have spillage of hazardous materials cars.

Secondly, we do not have reliable and accurate statistics. As you know, a report last year by GAO pointed out this problem. Now, what are the statistics in railroad hazardous materials? Mr. Dempsey said that everything was "peachy creamy". But if you look at the latest report by the Association of American Railroads—the Annual Report of Hazardous Materials Transported By Rail. In every major category of derailments, the statistics are worse. The number of train accidents involving hazardous materials have increased for the last 3 straight years. The number of train accidents in which a hazardous materials car was damaged or derailed has increased each of the last 3 years. The number of train accidents involving a release has increased each of the last 3 years.

And moreover, what is not in the statistics is important. I will only give you one example. A train crew was called to the scene of an accident in Indiana a few years ago. It was on the CSX system. It was a maintenance-of-way crew. They were told to clean up the mess. It was a hazardous materials spill. The crew had no protective clothing, and they were not instructed what the chemicals were. Today, three of those crew members have died of cancer. Two now have terminal cancer. That is not in any statistics you will ever see. But those are the facts.

We need something done about this area. It is not rail labor, Mr. Chairman, saying, do it. It is the National Transportation Safety Board, the General Accounting Office, the Congressional Research Service, the Office of Technology Assessment—these are groups that look at this issue objectively. They do not have a bias in any way, shape, or form. They say some significant changes must be made.

Now, what should be done? Well, I do not have the time to go through in detail what we think should be done, but I strongly encourage you to take a look at H.R. 3588. We believe that such bill, which was introduced in the House, gets to the basics. It deals with the serious problems that we have out there, not only with training, not only with issues such spacing of cars, et cetera, but it gets down to the real concept of what is going on out there. For example, provide the crew member with protective clothing and a mask. Provide an on-the-train manifest for each member of that train crew. Do not rely on just having one sheet of paper on that train. If there happens to be a caboose on the train, it should be on the rear of the train as well. This bill, H.R. 3588, Mr. Chairman, goes into the basics.

I know the time is short. But one other point I want to make, and that deals with state preemption. If there is one issue that I

have lived with for 20-some years in the railroad industry, it is preemption of state laws. The issue is not clear cut. It is certainly complex. But what is needed here, in my judgment, Mr. Chairman, is to have a uniform Federal statute and regulations that the entire Nation should comply with, and allow the states to enforce it. Give some power here, because in the Federal railroad area alone, they are not even enough hazardous material inspectors for one in each state. That is outrageous, frankly, when you are talking about the millions of tons of hazardous materials that are moved by rail. Let the states help in the enforcement procedures.

You do not have a constitutional problem here. Congress has plenary power in interstate commerce to determine how, where, and under what conditions a state could be involved in enforcement. You have done that in the Federal Railroad Safety Act, which is working so-so, I do not think it is very good.

The other problem is that there is no state funding. Congress, in the last two Congresses, has not provided the matching 50 percent funding for state inspectors. So the states are having to go this alone, and they are getting hit in every court. In every state that I am aware of, any time they try to promulgate a regulation or enforce it, the railroads say "preemption".

I will not take any more time, Mr. Chairman. I do hope you get a chance to look at H.R. 3588, though.

[The statement and questions and answers follow:]

TESTIMONY OF LAWRENCE M. MANN
RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is Lawrence M. Mann. I am an attorney representing the Railway Labor Executives' Association (RLEA) in this proposed legislation.

The RLEA is concerned that, recently, railroad safety and particularly the transportation of hazardous materials has been neglected to such a degree, that only by Congressional action can safe rail transportation of hazardous materials be rehabilitated. Railroad safety is handicapped by a remiss Federal Railroad Administration, that fails to respond to the appeals not only of labor, but states and independent federal investigators (such as NTSB and GAO), for enforcement that would help attain safe rail transport.

We are here today to encourage Congress to mandate improved federal requirements for transporting hazardous materials.

BACKGROUND AND STATISTICS

The Hazardous Materials Transportation Act (49 U.S.C. § 1801 et. seq.) (HMTA) is outdated and does not serve existing demands placed on railroads by the growing industry of hazardous materials transit. Society can no longer tolerate reactionary regulation, which has been the primary method of administering hazardous materials transportation. This Congress should meet the challenge with prospective legislation before a catastrophe occurs.

In testimony before your committee in 1987, Dr. Paul Rothberg, from the Science Policy Research Division, Congressional Research Service testified:

> "[r]eports by CRS, the Office of Technology Assessment and others all have pointed out the the current Federal program for hazardous materials transportation merits concern. These studies find that the current program could do more to meet the basic goal of the Hazardous Materials Transportation Act, which is . . . to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce."

Hazardous Materials Transportation: Hearings Before The Subcommittee On Commerce, Science, and Transportation 100th Cong., 1st Sess. 22 (1987). Dr.

Rothberg's concern is demonstrated by a 1988 General Accounting Office study that showed in Pennsylvania alone, the Federal Railroad Administration (FRA) levied only one fine, $2,500.00, in twenty one accidents despite glaring violations of federal regulations by several railroads. This steady practice by the DOT has placed the public in the precarious position of waiting for a Pandoras tank car to rupture, spill or explode and devastate a community because of the inadequate rail safety standards and enforcement.

On February 26, 1989, in Akron, Ohio, 2,000 homes were evacuated, 17,500 passengers of the Metro Bus System were stranded, 39,000 students, teachers, employees and employers had the day off because two tank cars containing butane erupted after 21 of 49 cars derailed near a tire manufacturer. Adding to the potential worries of all involved, was the fact that the tire manufacturing plant had large quantities of butadiene, the same chemical that exploded in New Orleans on September 8, 1987, (See, NTSB/HZM-88/01) as well as acrylonitrile and ammonia gas. The facts of the accident demonstrated that there was uneven weight distribution on the train and poor track maintenance. This is but one more disaster avoided, but as Senator Metzenbaum points out, the incident proves "the need for more federal laws dealing with transporting hazardous materials."

Probably the most frightening overall assessment of the serious problems in hazardous materials transportation is contained in the two reports of the U.S. General Accounting Office on April 5, 1989 and on November 17, 1989. Railroad Safety: FRA Needs to Correct Deficiencies in Reporting Injuries and Accidents (GAO/RCED-89-109) and Railroad Safety: DOT Should Better Manage Its Hazardous Materials Inspection Program (GAO/RECD-90-43). In summary, the reports found:

Although FRA's hazardous material safety program is directed at minimizing the risk of hazardous materials releases, railroad safety indicators showed that risks were increasing rather than decreasing. For example, from 1985 to 1989, hazardous materials releases increased 40 percent. Also, from 1984 to 1988, the number of safety defects found by FRA hazardous material inspectors increased 69 percent and violations (serious defects) increased 600 percent.

During the past 3 years, there were a total of about 8,500 accidents, including 144 with hazardous materials releases. Track and equipment defects caused 59 percent of the accidents, human errors accounted for 24 percent, and other causes 17 percent.

FRA has no assurance that shippers and railroads were adhering to hazardous material regulations. For example, FRA's 28 hazardous materials inspectors were not able to annually inspect 85 railroads, 15,000 shippers, and 1.1 million carloads of hazardous materials transported by rail nationwide. Inspection coverage was further reduced because FRA inspectors were primarily inspecting individual tank cars and not reviewing the adequacy of shippers' and railroads' safety procedures. Also, FRA did not systematically identify shippers transporting hazardous materials by rail because complete data on such shippers were not available. The Research and Special Programs Administration (RSPA), which issues Department of Transportation (DOT) hazardous materials regulations, could help FRA develop a systematic approach by establishing a shipper registration program.

The five railroads we visited were not accurately or completely reporting injury and accident data. The primary reason for this was that the railroads did not update their reports before submitting them to FRA.

The reports highlight that hazardous materials risk indicators are

increasing, the FRA's inspection program is ineffective, FRA's staff resources are inadequate, FRA's inspection guidance is inadequate, high-risk shippers and railroads have not been targeted, there is a need to systematically identify hazardous materials shippers, injuries and accidents have been inaccurately and underreported, and railroads lack internal control procedures for reporting accurately Of course, the RLEA has been complaining about these problems for years, all to no avail.

As we have pointed out to the Committee in previous testimony, approximately 10% of the employees are injured each year on the nation's railroads. In recent years, there have been approximately 1,000 total rail related fatalities annually, and over 6,000 rail highway grade crossings accidents. In addition, there are more than 3,000 train accidents not at crossings and nearly 30,000 incidents.

Of great concern is the demonstrated declining FRA inspection and enforcement practice, and the fact that accidents involving hazardous materials are increasing. Last year, out of 77,765 tank cars inspected, there were 16,904 defects recorded. The FRA sought fines in only 815 of these cases. The cost per defect was only $46.73, an insignificant sum to billion dollar railroads. Also, the FRA and the Association of American Railroads document the following:

	1987	1988	1989
Number of Train Accidents Involving Hazardous Material Car	351	475	502
Number of Train Accidents In Which Hazardous Material Car Was Damaged or Derailed	186	237	251
Number of Train Accidents Involving a Release of Hazardous Materials	40	44	56

You will notice from the above chart that in every category there was an increase from 1988. For example, releases of hazardous materials in train accidents increased almost 30%. We are concerned that the interest of public safety is now left to the audit sheets of railroads. The inadequacy of the FRA enforcement provisions, coupled with the increases in accidents/incidents and the fact that railroads are now becoming the chief transporter of hazardous materials, proves there can no longer be laissez faire regulatory efforts.

In FY 89, the FRA only had funds appropriated for 327 safety inspectors, exclusive of supervisors. Of these, only 10% were hazardous materials inspectors. For FY 90, the FRA was authorized to employ an additional 40 safety inspectors but none of which were specifically designated as hazardous materials inspectors. In the Senate Appropriations Committee report on the DOT's FY 90 budget, it is pointed out that the Committee is concerned "that the total sum of civil penalty forfeiture collected during fiscal year 1988, is sending an inappropriate message to industry and to railroad employees and the hazardous materials community. Meaningful levels of penalties are needed to reduce noncompliance." See, S. Rep. No. 101-121 at p. 89.

The nation's railroads transport approximately 3,000 car loads of hazardous materials daily totalling about 4 billion tons annually. In addition, many thousands of cars frequently contain hazardous residue and, when released, could cause serious injury or death. Fortunately, there have been no railroad related deaths from hazardous materials accidents in recent years. Nevertheless, there is a cautious recognition that the railroad industry is very lucky. It is deceptively easy to gloss over some major underlying problems when no death-causing catastrophes have resulted for some time. However,

there have been a number of railroad accidents that very easily could have been devastating.

An accident on April 11, 1987, in Pittsburgh will underscore this concern. Two Conrail freight trains collided in a crowded neighborhood. Several of 34 derailed cars began to burn, which caused 14 relatively minor injuries and the evacuation of more than 16,000 persons. The train contained a derailed leaking car loaded with phosphorus oxychloride, a liquid used as a gasoline and hydraulic fluid additive. This liquid turns to vapor in the air and is lethal. The train was also hauling toluene disocyanate, a flammable substance that can irritate lungs, skin and eyes.

The frightening aspect of a hazardous material release on the railroads is that it can happen anywhere, not just in the industrial belt. Towns like Freeland, Michigan on July 22, 1989, Clay, Kentucky on February 5, 1984, Akron, Ohio on February 26, 1989, and Elkhart, Indiana on February 4, 1985, to name a few, are places where catastrophic damage was avoided only by chance. Everything possible must be done to mitigate against the possibility of deaths and injuries from rail accidents involving hazardous materials.

An Office of Technology Assessment study, Transportation of Hazardous Materials released in July 1986, at page 8 similarly recognized this overall problem.

> Rulemakings are initiated either by petition from industry of an interested party, or are forced on DOT by widespread public concern, often focused through NTSB or Congress. This kind of reactive rulemaking does not measure up to today's needs.

The railroad industry and the DOT were aware in the early 1960's that serious safety problems existed in the uninsulated railroad tank cars that transported liquid propane gas, as well as ammonia. Literally nothing was

done about the hazard until a public outcry demanded action after a disaster at Waverly, Tennessee, in 1978. Only then did the DOT move to require head shields, shelf couplers and thermal insulation on certain jumbo sized tank cars. Incidentally, it took DOT 6 years to finalize the rule. The DOT eventually adopted this recommendation in HM-175 which became effective March 1, 1984. HM-175 required 112 and 114 type jumbo tank cars to be equipped with shelf couplers, head shields, and thermal protection. However, the series 105 and 111's were not fully covered by the rule. The facts of the Paxton, Texas accident on September 8, 1979 gave rise to a NTSB Special Investigation Report, The Accident Performance of Tank Car Safeguards, NTSB-HZM-80-1. In 1980, the NTSB made a number of conclusions, including:

> 1. Cars equipped with protective couplers successfully resisted vertical separation and reduced the ensuing probability of head punctures during run-in.
>
> 2. The utility of head shields in the four cars equipped to resist punctures by the coupler during the initial run-in was not tested, since none of the cars uncoupled. Evidence suggests that the head shields on car No. 30 prevented end penetrations during the subsequent collisions.
>
> 3. Thermal coating protection prevented the catastrophic rupture of cars exposed to the fire.
>
> 4. Insulation provided some protection to cars exposed to the fire.
>
> 5. Secondary collisions with other cars and objects after the cars left the tracks were a frequent cause of product release.
>
> 6. Damaged top and lower outlet fittings were the major sources of product release.

7. The mix of heavy and light cars in a train consist appears to influence the collisions and damage that occur.

8. Th Federal Railroad Administration has not collected or published data on the effectiveness of tank car protection.

9. The Federal Railroad Administration has not documented how tank car product loss occurs in tank car accidents.

From these conclusions, the NTSB made the following recommendations:

Extend the requirements for top-and-bottom shelf couplers to all tank cars used to transport hazardous materials. (Class I, Urgent Action) (R-80-10).

Extend the requirements of 49 CFR 179.105, including those for head shields and thermal protection, to include new and rebuilt specification 105 tank cars. (Class I, Urgent Action) (R-80-11)

Examine specialty products and Class A poisons which are shipped in Type III tank cars to determine if the toxicity hazard is sufficient to justify the protection afforded by 49 CFR 179.105. (Class II, Priority Action) (R-80-12)

Take immediate steps to cause the modification of both new and existing tank cars so that damage to the top fittings and bottom outlet valves is minimized in train accidents. (Class I, Urgent Action) (R-80-13)

Cause data to be collected on tank car derailment behavior to identify breach mechanisms, analyze these mechanisms, identify control methods, and incorporate findings in new car construction. (Class II, Priority Action) (R-80-14)

Conduct tests of tank cars in freight train derailments to determine if the severity of collision damage can be reduced by tank car placement in trains. Identify and test countermeasures. (Class II,

Priority Action)

Require crashworthiness testing of new hazardous materials tank car designs to resist breaching in the derailment environment. (Class I, Urgent Action) (R-80-16)

To date the NTSB has closed only numbers R-80-010 and R-80-012 with acceptable actions. The NTSB has issued further concerns with the DOT's failure to act and enforce regulations. On September 29, 1987, the Board issued its report on a highly publicized accident on the B&O Railroad at Miamisburg, Ohio, which occurred on July 8, 1986. Fifteen cars derailed, 3 of which were tank cars. One of the tank cars ruptured and during the 48 hours after accident a 3-square mile area was evacuated, forcing an estimated 30,000 people to leave their homes and businesses. A total of 596 persons were treated for various complaints during the incident and property damage totalled $3.5 million. The Board found one of the tank cars to be defective. In its conclusion, the Board stated that the FRA has not established direction nor control over the implementation of the authority it delegated to the Association of American Railroads to assure that public safety concerns are appropriately balanced against industry economic interests for tank car safety. The Board said that the absence of effective FRA action for determining the adequacy of the AAR's implementation of the delegated responsibilities has resulted into an industry self-regulated system which does not provide adequate public safety accountability on decisions made affecting tank car designs, construction, and modification.

A runaway train at Helena, Montana on February 2, 1989, demonstrates once again the overwhelming evidence of poor regulatory administration by DOT of hazardous materials transportation. At Helena, 49 cars of a Montana Rail Link freight train rolled backward 11 miles down a mountain grade and

collided with a standing locomotive in a freight yard. Hydrogen peroxide was released from on car and ignited causing over $6 million in damages. The NTSB's report highlighted the failure of the DOT to provide adequate protection for the public by allowing certain products to be carried in tank cars inadequately protected. The Board said that DOT's regulations on what products could be transported in particular classes of tank cars were drafted in such a way as to allow the tank car and railroad industries to maximize economies, with no specific safety methodology used to determine unreasonable risk to the public. The Board made a similar statement after another accident in 1981. The Board also repeated an earlier recommendation to require head shields on aluminum tank cars.

In NTSB/RAR-89/04 resulting from the Altoona, Pennsylvania accident on July, 30, 1988, the NTSB told the FRA to:

> Develop and implement a program that will (1) provide consistent follow up of defects noted on inspection reports to verify that corrective action has been taken, (2) outline in detail the responsibilities of field and headquarters personnel regarding defects and violations noted, and (3) alert FRA officials of carriers' noncompliance with Federal regulations and trends in carriers' operations.

This recommendation was underscored by NTSB Member Jim Burnett's dissent which found

> Our investigation establishes that the Federal Railroad Administration (FRA) failed to do its job, which in turn led to this accident.

The political climate by the Executive Branch in rulemaking of hazardous materials must be viewed with skepticism. An example of politics run amok at DOT involves the issue of classifying anhydrous ammonia as a

poison. On May 5, 1987, the Research and Special Programs Administration (RSPA) published a Notice of Proposed Rulemaking in Docket No. HM-181. The Notice contained proposed changes in the packaging standards, hazard communication, hazard classification, and bulk packaging requirements. Since then, three Supplemental Notices have been issued, on November 6, 1987, November 14, 1988 and May 23, 1990. One of the proposals in the docket relates to changing the classification of anhydrous ammonia from a nonflammable gas to a poisonous gas. RSPA stated that classifying anhydrous ammonia as a "poisonous gas" would be the most accurate technical description of the inhalation hazards of the gas. (See 54 Fed. Reg. 31,158 (July 26, 1989)). Also the international hazardous materials transportation regulations classify anhydrous ammonia as a poisonous and flammable gas. Nevertheless, because of pressures from fertilizer manufacturers and agribusiness groups, the RSPA has issued a revised notice of proposed rulemaking to retain the nonflammable gas classification for the gas, plus requiring the words "inhalation hazard" on the packages and shipping papers. This latest proposed change is a slight improvement by RSPA, but it really is nothing more than an accommodation to political interests at the expense of safety. This is the kind of rulemaking that should not be allowed, particularly when dealing with hazardous materials and the safety of the public. RSPA has acknowledged that ammonia is the second most common hazardous material in events involving death or injury. There have been "at least 1046 transportation incidents involving inhalation of ammonia in the United States between 1969 and 1987. These incidents resulted in 25 deaths and 602 injuries." It is apparant DOT only hears the loud and clear message of money management and not safety.

PENDING LEGISLATION

Since HR3520 and HR3588 are the two most comprehensive bills pending on hazardous materials, these will be discussed first.

H.R. 3520 & H.R. 3588

In the fall of 1986, the RLEA petitioned the DOT's Research and Special Program Administration for 10 changes in the regulations governing hazardous materials transportation by rail. We also sought a hearing on the proposals. To date, the RSPA has only given the petition a docket number (P-1002), and has taken no other action. Discussed below are some of the major safety problems which still exist and, incidentally, are similar to those requested in P-1002. These identified safety problems are set out in H.R. 3588, introduced by Congressman Gerry Sikorski on November 3, 1989. We urge your support of this bill. In addition to H.R.3588, we believe that H.R.3520 will significantly improve hazardous material transportation by rail.

1. There are no specific federal requirements for training of railroad workers involved in hazardous materials accidents. H.R. 3520 is somewhat deficient in this respect. Section 9 of H.R. 3520 authorizes the Secretary to establish personnel training requirements and emergency response procedures. However, too much discretion is given to the Secretary. Congress must affirmatively state the policy that all safety sensitive personnel be provided training when they work in proximity to any hazardous materials. Obviously, the railroad crew members are the first persons on the scene and each one should be adequately prepared to deal with any emergency. Overall, the railroads provide haphazard and inconsistent quality of training, and on some railroads no training at all is given employees.

On October 9, 1988, the House Committee on Government Operations issued a report which related to the training of workers involved in the

highway transportation of hazardous materials. It found that:

> . . . the Department has been singularly ineffective in recognizing its obligation to promote safety through improved worker training. That neglect is reflected in DOT's weak and vague regulations concerning the training of . . . personnel involved with the highway transport of most hazardous materials and its near total failure to enforce those standards. (H. Rep. No. 99-985 at p. 2).

That report dealt only with highway transportation, but the exact situation exists with respect to rail transportation.

We recommend a mandatory training program for rail workers, including training grants for worker organizations. Employees in the railroad industry need targeted programs that will help in preventing hazardous materials accidents, and programs that will teach them the proper procedures to follow when emergencies -- or potentially dangerous situations -- occur. Rail workers generally are not members of an officially-designated emergency response team, but their normal job functions usually result in their being the first on the scene of hazardous materials accidents.

Therefore, to deal with training needs related to hazardous materials in the railroad industry, we recommend that the Hazardous Materials Transportation Act be amended to:

a. Establish minimum training requirements for the railroad industry. The training program should be tailored specifically for the purpose of preventing railroad accidents involving hazardous materials, and teaching workers in all relevant railroad crafts the appropriate responses to emergency or potential emergency situation; and

b. Provide cost-sharing start-up grants to rail labor organizations to enable their effective participation in the planning and implementation of

the training programs. The labor organizations will face sizable initial costs in preparing technical information, establishing in-house technical capabilities, and putting into place procedures for assuring continuing involvement with the training programs by their members.

Section 2 of H.R. 3588 accomplishes the above, specifically, but H.R. 3520 provides only that general training and qualification criteria be established.

The need for the above requirements should be self-evident, but accidents make the point. On September 9, 1987, butadiene, a colorless flammable gas, used primarily in the manufacture of synthetic rubber but also used in developing rocket fuels, plastics, and resins, vaporized and ignited after it leaked from the bottom manway of a tank car located at the CSX terminal in New Orleans. The tank car, a DOT series 114, was specifically designed to transport liquid petroleum gas (LPG) and anhydrous ammonia. The resulting flames rose one hundred feet and engulfed both bridge spans of Interstate 10. The car erupted at two in the morning so very little traffic was on a usually busy interstate. During the next 48 hours over 200 hundred city blocks were evacuated causing only inconvenience and luckily, no injury to thousands of people. The tank car burned for two days and damage was estimated at $500,000. This is just one more potential catastrophe that has been avoided by luck, and not by planning or regulation.

The NTSB found that the main cause of the accident was a faulty bottom manway. Contributing to the accident was the failure of some railroad employees who were not aware of the distinct odor emitted by butadiene. Educating and training the employees to recognize certain odors and sounds as potential catastrophes may have possibly prevented this accident. See, NTSB/HZM-88/01, p. 59.

On December 31, 1984, at the Missouri Pacific Railroad Company's North Little Rock, Arkansas rail yard, ethylene oxide leaked from a DOT series 111 tank car. Ethylene oxide is a clear, colorless, volatile liquid used for making rocket propellants and is extremely toxic. Over 2,500 persons were evacuated and rail and highway traffic near the area was stopped. The NTSB found that the main cause was a faulty tank car. The Board also concluded the FRA does not adequately monitor manufacturers for compliance with DOT standards and proper construction methods. (See, infra, pp. 26-29). The NTSB further concluded that the switchman who discovered the leak was placed in grave peril because he was not familiar with and trained in hazardous material spills response. See, NTSB/SIR-85/03, p.20.

On February 4, 1985, anhydrous hydrofluoric acid (hydrogen fluoride) released from a DOT series 112 tank car at Conrail's receiving yard in Elkhart, Indiana. Hydrogen fluoride is a colorless fuming liquid used as a catalyst for various chemical reactions, as well as refining uranium and as a component of some liquid rocket propellants. It is toxic and corrosive. This spill prompted the NTSB to recommend formalized training for railroad operating personnel regarding suspected leaking or leaking tank cars. The main cause was determined to be a Burlington Northern decision to continue transporting the hazardous substance even though the tank car was reported leaking the day before. Uninstructed decisions such as this cause an unnecessary risk of life and property to railroad employees and surrounding communities. See, NTSB/HZM-85/03.

On February 5, 1984, 38 cars on a Seaboard System Railroad derailed near Clay, Kentucky. One of the derailed cars contained oleum (fuming sulfuric acid) which reacts violently when introduced to the atmosphere. The accident occurred in rural Kentucky so an evacuated area of six square

miles only effected 25 families. Once again, the NTSB found an ill equipped tank car was the primary cause. More importantly, Seaboard's training and testing of the train crewmen was not adequate to insure that the crew acted safely and correctly to the spill See, NTSB/SIR-85/01, p. 24.

Finally, the NTSB recommended to the railroads and the FRA five years ago:

> ". . . develop and implement emergency planning and response procedures for handling releases of hazardous materials. These procedures should address, at a minimum, initial notification procedures, response actions for the safe handling of releases of the various types of hazardous materials transported, identification of key contact personnel, conduct of emergency drills and exercises, and identification of the resources to be provided and the actions to be taken by the railroad and the community."

NTSB R-85-53

Nevertheless, no administrative action was ever taken.

We believe an excellent program for training and education requirements for employees engaged in hazardous substance work is required by the Occupational Safety and Health Administration (OSHA). Congress authorized OSHA in the Superfund Amendments and Reauthorization Act of 1986 (SARA) to provide standards for employee protection during initial hazardous waste site characterization and analysis monitoring activities, materials handling activities, training and emergency response. 54 Fed. Reg. 9294 (1989). On March 6, 1989, OSHA amended its standards for hazardous waste operations and emergency response. The amended rule published at 29 CFR § 1910.120 regulates the conditions for safety and health of employees involved in cleanup operations at uncontrolled hazardous waste sites.

The OSHA regulation, adopted pursuant to a well defined Congressional policy, is designed to cover all hazardous emergency situations for all toxic substances which would clearly cover all types of chemical spills. It must be noted that once a tank truck or railroad tank car spills a toxic chemical it creates a hazardous waste site in the very real sense. 54 Fed. Reg. 9298 (1989). All railroad employees that come into contact with such an area should be required to participate in the education and training programs mandated by OSHA, but they are not.

RLEA recommends that each railroad transporting hazardous materials provide training to all employees involved in the handling and transportation of hazardous materials. After completing the training, the railroad shall certify that said employee has knowledge of and has satisfactorily passed an exam that tests at least all of the following:

a. Competent understanding of the hazardous materials classification system.

b. The use and limitation on use of the hazardous materials placarding, labeling, and marking systems.

c. The general handling procedures, loading and unloading techniques, and necessary steps to reduce the probability of release or damage during transportation

d. The employee mus be able to appreciate the health, safety, and risk factors associated with hazardous materials and their transportation.

e. The employee must be able to identify the appropriate emergency response and communication procedures for dealing with hazardous materials spills.

f. The use of the Emergency Response Guidebook and recognition of its limitations or use of an

equivalent document approved by the Secretary.

g. The applicable hazardous materials transportation regulations.

h. All personal protection techniques.

The railroad employee should receive training in the classroom, as well as in actual field experience.

2. One of the most critical safety concerns has arisen due to a court decision issued on October 10, 1986, in the United States District Court in Georgia. The order is captioned Southern Railway Company v. John H. Riley, et al., C 84-1990A. The decision wipes out any effective enforcement authority in the FRA under the Hazardous Materials Transportation Act. It requires that a railroad have "actual" knowledge, analogous to the criminal mens rea, of a wrongful act before a violation exists. It is almost impossible to ever establish a railroad's "actual" knowledge of a violation. If not corrected by legislation, the railroads will be given carte blanche to violate the hazardous materials laws. Immediate action is needed by striking the word "knowingly" from 49 U.S.C. § 1809(a)(1) which relevant part now states:

> Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this chapter or of a regulation issued under this chapter, shall be liable to the United States for a civil penalty . . . . (underlining added).

Both section 13 of H.R. 3520 and section 3 of H.R. 3588 provide for this needed change. We believe that the provisions in H.R. 3588 are clearer and would provide no opportunity for court challenges.

3. Section 24 in H.R. 3520 provides for a study into tank car design process. We believe the time for studying this issue is long past and Congress

now must mandate certain design changes in all 105 and 111 type tank cars. For the past ten years DOT has finagled on this issue and avoided its responsibility. DOT is well aware of the problems concerning DOT 105's and 111's.

There are approximately 10 to 15 thousand small sized tank cars (DOT 105's and 111's) that carry the same lading as the jumbo tank cars. These 105's and 111's are much older than the jumbo tank cars and are in actuality not restricted by any regulation. Initially, we note NTSB/RAR-85/10 at page 10, where the NTSB stated:

> " The board is concerned that the complete spectrum of DOT specification tank cars authorized to carry materials posing risks to public safety if punctured or otherwise breached was not addressed in the rule. Additionally, the docket was not expressly kept open to accommodate further rulemaking."

Common sense dictates if the tank car transports a hazardous material, the car should be retrofitted to meet the protections contained in the 1984 rule. The history noted above concerning regulation of tank cars effectively demonstrates the need for controlling legislation. Not another study.

Once again, we will use an NTSB investigation to bring the point home. On April 3, 1983, in the Denver and Rio Grande Western Railroad Company train yard in Denver, Colorado a tank car was punctured and nitric acid was released. Nitric acid is extremely toxic and only because the spill occurred on a Sunday was the evacuation limited to only 9,000 people. The car involved was a DOT classification 111. It was made of aluminum and was not equipped with headshields or thermal protection which, in the NTSB's opinion, would have prevented the accident. DOT 105's and 111's pose an unreasonable threat to the public and the crew members who transport them.

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Sec 4 of H.R. 3588 adequately addresses this concern.

See also, the NTSB Report concerning the Helena, Montana accident on February 2, 1989, where the Board recommended head shields for aluminum tank cars. (NTSB-RAR-89/05).

4. The July, 1986 Miamisburg, Ohio accident illustrates the need to have the spacing of hazardous materials cars better defined. See, NTSB/HZM-87/01. There should not be a carload of high explosives positioned next to a propane or caustic acid carrying car, and all hazardous materials cars should be separated by idlers or other rail cars. Improper make-up of trains has been a problem for many years. In a review of the accident causes during recent years, we have found in approximately 30% of the cases in which the railroads assigned human error as the cause of an accident, that, in fact, improper make up of the trains caused the accident. In 1988, out of 157 accidents which railroads attributed to human error, there are strong indications of improper train make up in 47 of the accidents. The Freeland, Michigan accident on July 22, 1989, demonstrates the need for rules concerning the placement and transportation of hazardous materials cars. The Freeland derailment occurred after CSX joined an Atchison Topeka & Santa Fe flat car having a history of derailments to a unit train containing hazardous materials. Predictably, the flat car derailed and three tank cars carrying hazardous materials were breached and exploded. This conduct of placing unsafe or irregular cars with trains carrying hazardous materials must stop. Section 19 of H.R. 3520 requires the Secretary to issue regulations covering trains carrying hazardous materials, including car placement, maximum speeds, switching, employee qualifications, etc.. We support the intent of this provision.

Section 5 of H.R. 3588 is more explicit concerning car placement and we

believe offers greater assurances for safe rail transportation, rather than giving the Secretary complete discretion.

5. Three catastrophic accidents in the San Antonio, Texas, area - - Medina River (September 14, 1985), Kelly Air Force Base (February 28, 1986), and Salado Creek (June 8, 1986) reveal a highly suspect pattern in train profiles and shifted loads. The tonnage profiles of the train involved in those accidents showed heavy blocks of cars placed near the rear. These heavy blocks caused cars to run in and out, resulting in ramming and jerking forces on the immediate preceding and trailing cars. This resulted in shifted loads and damaged cars causing derailments. Therefore, we feel that there should be a nationwide regulation concerning weight distribution in long trains. Section 19 of H.R. 3520 could possibly be construed as providing this. However, section 6 of H.R. 3588 specifically mandates that regulations be issued regarding weight distribution in trains. We believe this offers the best alternative. The DOT has been aware of this problem, but it has not taken any action to correct the safety hazard. The point was made above, but we state it over:

> Our investigation establishes that the Federal Railroad Administration (FRA)failed to do its job, which in turn led to this accident.

See, NTSB/RAR-89/04.

The DOT is not adequately fulfilling its statutory duty and, unless specifically required to do so, may not issue such regulation.

6. Along with tonnage profiles, every railroad should be required to furnish both the engineer and the conductor with a list of cars and their contents as they are positioned in a train. Again, we point to an example. In NTSB/HZM-87/01, the Miamisburg, Ohio accident, three tank cars containing yellow phosphorus, molten sulfur, and tallow derailed. Initially, 7,000

residents were evacuated. During clean-up a 3-mile area surrounding the site was evacuated forcing 30,000 people to move because the tank car containing molten sulfur ruptured. The NTSB found that the emergency response was hampered by the lack of information about the products and number of tank cars involved.

Current regulations require that only one crew member be provided such a list. (49 C.F.R. § 174.26(c)). Many accidents result in one or more of the crew members being incapacitated. For instance, the recent Southern Pacific derailment at San Bernardino, California, on May 12, 1989, resulted in the head end crew being crushed. If the train had been carrying hazardous materials, like the Miamisburg, Ohio train, the manifest could not have been found and emergency response would have been hindered. Therefore, both the engineer and the conductor should be provided a list of the cars in the train.

Section 8 of H.R. 3520 requires the Secretary to issue regulations governing the number, content and placement of documents relating to hazardous materials being transported or stored in transit. RLEA supports this provision. We believe this section can be improved by adding to it the clear requirement that both the engineer and conductor be given a copy of the consist. (See, Sec 7 of H.R. 3588).

7. Railroad tank cars that carry liquid should have appropriate baffles inserted in order to hold the sloshing of fluids at a minimum. The continuous back and forth motion of liquid causes a car to thrust forward and could result in accidents. H.R. 3520 does not address this problem. Section 8 of H.R. 3588 mandates that baffles be inserted. This is a relatively inexpensive addition when compared to the damage that will occur when a tank car derails due to the sloshing of the liquid.

8. In many rail accidents, car numbers and placard information are often not visible. Therefore, a standard color coding of certain tank cars that carry a particular hazardous commodity should be established. For example, chlorine gas cars could be required to be solid green, and propane cars could be half white and half black. The Freeland, Michigan accident noted supra, once again reminds us of this need. At Freeland, emergency response personnel were initially deterred in their response because they could not identify what the burning tank cars contained. Only after heroic efforts were they able to accurately determine the lading. We are aware that color coding all tank cars may be costly. Therefore, it may be appropriate to immediately require certain tank cars transporting ultra hazardous materials, such as explosives or toxic by inhalation, to be color coded with a time provision to color code the remainder of the fleet. We believe the Secretary should be required to issue such regulations as provided in section 9 of H.R. 3588.

9. At any time a train crew is to work with, haul and inspect cars hauling hazardous materials, these employees must be required to use protective clothing and gas masks. The OSHA regulations previously discussed also require protective equipment, including self contained breathing apparatus, to be worn by all persons at hazardous material sites. Because a railroad employee is subject to the same dangers after a derailment, the caboose and the engine should carry this protective equipment. Likewise, the employees must be trained as discussed above on the proper use of these personal protective devices. H.R. 3520 does not address this issue, and we refer you to Section 11 of H.R. 3588 for the inclusion of these requirements in your legislation.

10. After a certain number of years in service a tank car should not be used on the railroad. The Miamisburg, Ohio, accident demonstrates the

necessity for such a requirement. See, NTSB/HZM-87/01. There the tank car which ruptured was over 26 years old. We also draw your attention to the Freeland, Michigan accident. There, the flat car was 31 years old. Although it was not a tank car, its age contributed to the events leading to the accident. Any time a train moves hazardous materials, a requirement for age restrictions on the cars should exist. Section 10 of H.R. 3588 prohibits the use of any tank cars carrying hazardous materials which are more than 20 years old. We support this requirement.

11. The FRA should be required to inspect tank cars during the manufacturing process to assure that the manufacturer complies with DOT standards. At present only the AAR inspects the manufacturers' facilities to determine compliance. This inspection system receives its guidance from the AAR Committee on Tank Cars. This committee is composed of thirteen members, seven from the railroads and six from various trade organizations. These organizations include, The American Petroleum Institute, The Chlorine Institute, The Compressed Gas Association, Chemical Manufacturing Association, National LP-Gas Association, and the Railway Progress Institute. The current inspection policy is analogous to allowing the fox guard of the henhouse.

The history of the AAR policy in this matter is telling: As a result of the Waverly, Tennessee disaster in 1978, the NTSB issued significant findings. In R-78-28-31 the NTSB recommended in part:

> The evidence indicated that tank cars can and should be made safer. The jumbo tank cars were designed and certified by an interlocking group of business interests who manufacture, buy, sell, and use tank cars. Witnesses from the federal Railroad Administration (FRA), shippers, and tank car companies testified that the design of the jumbo

> tank cars did not represent a level of safety commensurate with their 200-percent increase in product capacity.

One of the most revealing statements then, and applicable now, states, "[p]ast history indicates that the industry determines DOT's action in tank car specifications and modifications." See, NTSB-SEE-78-2 p. 5. The AAR Committee on Tank Cars is still the same, and the industry determined policy still exists. Ultimately, accidents betray this policy.

The December 31, 1984, ethylene oxide release at North Little Rock, Arkansas illustrates the same problem. After the hazardous materials release, it was discovered that since 1971 the manufacturer of the involved tank car had been installing anti-shift brackets improperly. (See NTSB Report SIR-85/03).

Also, in NTSB/HZM-87/01, the Board found:

> 16. The AAR Tank Car Committee provides the primary control over tank car safety both in the United States and in Canada because the regulatory agencies of both countries have delegated their authorities to the AAR.
>
> 17. The FRA has not established sufficient direction or controls over the AAR's implementation of the authority it delegated for tank car safety to assure that public safety concerns are appropriately balanced against industry economic interests.
>
> 18. The absence of effective FRA action for determining the adequacy of the AAR's implementation of the delegated responsibilities has resulted in an industry self-regulated system which does not provide adequate public safety accountability on decisions made affecting tank car designs, construction, and modification.
>
> 19. The FRA has not established appropriate reporting requirements under the authorities

> delegated to the AAR so that the FRA would have timely notification of potential tank car safety problems.

Finally, in NTSB/HZM-88/01, the board recommended to the FRA:

> Establish quality control requirements for tank car manufacturers and tank car repair shops sufficient to ensure that actions taken comply with Federal regulations and with any conditions established in Association of American Railroads approvals for manufacture, repair, or modification of rail tank cars.

Section 24 of H.R. 3520 only requires a study to be conducted concerning the procedures followed during tank car design and the manufacturing process. This is a step in the right direction, but does not fully address the concern. Section 12 of H.R. 3588 is a better provision for improving safety.

The North Little Rock accident discussed above also points out the problem of inadequate brake equipment support attachments. Section 18 of H.R. 3520 will correct this glaring problem and RLEA supports this provision.

OTHER PENDING LEGISLATION

S.581

The most comprehensive bill introduced in the Senate is S.581 by Senator Spector. We support the provisions in this excellent bill. Among its provisions, which are not dealt with in either H.R. 3520 or H.R. 3588, are the requirements that: (1) There be a 24 hour emergency response at FRA; (2) FRA shall increase the number of inspections on trains, tracks and signal systems used in connection with hazardous material transportation; (3) The requirement that employees be certified if they inspect tank cars; and (4) A requirement that FRA have a professional engineer on its staff.

S.728 and S.729

These two bills introduced by Senators Danforth, Kassebaum and Bond are limited in scope and provide little impact on major problems confronting hazardous materials transportation. Both bills cover radioactive materials safety, and S.728 also adds requirement for permitting, retention of placards, deleting "knowingly" from the statute (as does Sec. 13 of H.R.3520 and Sec. 3 of H.R.3588), prohibition against tampering, and motor carrier rating. There is nothing objectionable about the provisions, but much more is needed to have a significant impact on safety.

S.2318 and H.R.2584

This similar legislation was introduced by Senator Metzenbaum here and by Congressman Applegate in the House. H.R.2584 is co-sponsored by nearly 200 members of the House of Representatives. The RLEA supports the provisions of the legislation with a modification as it applies to the railroad industry. In general, the bill requires the DOT to issue regulations requiring all generators of hazardous materials or wastes, to electronically transmit a manifest on hazardous commodities transported by ground and rail to a centralized computer system. Each vehicle/container will be assigned a permanent identification number. The shipper is responsible for identifying the contents of each container and placing the information into the nationwide computer system. Only when there is a different kind of product shipped in the container, will it be necessary to provide additional information to the computer system. Once in place, the computer information would cause the elimination of the use of written manifests and placards. Each bill require that the local communities shall be provided a flow study from the information collected so that they could determine the types and quantities of materials traveling through their cities and towns.

Penalties for violations of the HMTA are significantly increased.

We do not believe the elimination of placards and written manifests in the railroad industry would be advisable. It is always extremely important for the crew to know the location of each car in the train, the ones which are loaded, those which contain hazardous materials, etc.. These elements, unlike movements on trucks, affect the safety of train handling and the inspection requirements. Therefore, we would not object to the nationwide computer system being put into operation as provided by H.R.2584, so long as the current practice of using placards and written manifests in the railroad industry is not eliminated.

Senator Metzenbaum's bill, in addition to the above, provides for an annual registration fee to be used for grants to the States to assist in emergency response training. Also, routes shall be designated by the Secretary for commodities which pose an immediate threat in the event of an accident. Section 4 of this bill would entitle the States to enforce their laws on hazardous materials covering railroads in the same manner as with other carriers under the HMTA. That is, the state laws cannot be inconsistent with the federal laws.

INVOLVEMENT OF THE STATES

Federal preemption of state health and safety laws must not be lightly viewed. We recognize the concern to keep interstate commerce moving without undue state intervention. However, a state must not be foreclosed from practicing that which protects its own citizens from unsafe railroad operations. At every opportunity the DOT attempts to eliminate the various states' participation in railroad safety.

H.R. 3520 allows the states to adopt the same regulations as the federal standards. Unfortunately, Congress for the first time since enactment of the

Federal Railroad Safety Act did not in FY 89 provide any funding to assist the states in enforcing the railroad safety laws. In doing so Congress broke its long-standing pledge to the states in 1970 that there would be a federal-state partnership to enforce rail safety. The involvement of the states is extremely important in helping to improve safety. Currently, there are 32 states employing 107 inspectors participating in safety inspections. The states have invested substantial time and effort in establishing an effective program. Significant assistance could be obtained to help assure that the railroads comply with the laws and regulations.

The need for state enforcement is demonstrated by the recent problems in the Department of Housing and Urban Development and the Savings and Loan crisis. When the the Executive Branch forecloses all state involvement, the public pays the price. Here, if states are not allowed to properly participate then lives will be lost when free market theory ukases safety.

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July 27, 1990

The Honorable Ernest F. Hollings
Chairman
United States Senate
Committee on Commerce, Science,
and Transportation
Washington, D.C. 20510-6125

Dear Senator Hollings:

This letter is to answer the follow-up questions to the Committee's hazardous materials hearing on July 25, 1990.

ANSWERS TO SENATOR HOLLINGS/EXON QUESTIONS

1. Re: Preemption

Concerning yours question regarding the interest of uniformity and the effectiveness of the present laws, the RLEA believes that the provisions of Section 18 of H.R. 3520 provides a reasonable solution. In that bill, the states would be allowed to adopt the Federal hazardous materials standards as state laws, and inspect and enforce the Federal regulations. This has the effect of providing Federal uniformity and still gives states the opportunity to protect its citizens. At present there is not even one federal railroad hazardous material inspector for each state. Moreover, each independent Federal agency that has investigated the enforcement of the railroad safety laws by the Federal Railroad Administration has been highly critical of FRA. These agencies include the National Transportation Safety Board, the General Accounting Office, and the Congressional Research Service. Section 18 of H.R. 3520 could help alleviate many of the criticisms in hazardous materials enforcement, and still provide national uniformity.

2. Re: Implementation of Safety Improvements

The jury is still out concerning the receptivity of the current administration towards instituting positive changes in the regulatory structure. We might note, however, that the current administration still has

not adopted some very significant regulations mandated by the Railroad Safety Improvement Act of 1988 - - i.e. inspection, testing and maintenance of grade crossings; camp cars that are safe, clean and sanitary; and bridge protection for maintenance of way employees. In fact we cannot point to any major rail safety rulemaking that has been concluded by the Federal Railroad Administration during Mr. Bush's term of office.

ANSWERS TO SENATOR KASTEN'S QUESTIONS

1. (a) & (b) This is to answer Senator Kasten's questions, as to how to improve improperly placarded rail cars and shipping papers. There are two provisions in H.R. 3588 which would help improve the identification of hazardous cargo. First, rail cars transporting certain extra hazardous materials should be color coded. See Section 9 of H.R. 3588. For example, cars transporting chlorine could be colored green. Liquid propane cars could be painted silver. There is precedent for color coding. There is a certain type of tank car which has stripped colors at the ends. Secondly, both the engineer and the conductor of each train carrying placarded hazardous materials shall be furnished a manifest. See Section 7 of H.R. 3588. Current regulations require only one copy on a train. See 49 C.F.R. § 174.26 (c).

We support the bill introduced by Senator Metzenbaum, S.2318, which provides for computerization of the manifests. However, as pointed out on page 29 of my written testimony, placards and written manifests should not be removed from railroad cars. Finally, substantially increasing the fines for violations of the hazardous materials laws would provide a greater incentive for carriers to comply.

(c) The RLEA supports the proposal to require companies to obtain permits before being allowed to transport hazardous materials. It would help to weed out irresponsible carriers, and would certainly improve the current problem of inaccurate placards and manifests.

(d) The rating system of motor carriers is only as good as the federal administration of the program. If the DOT continues its lackadaisical enforcement attitude, then the ratings system will be ineffective.

Any such rating should be continuously reviewed, and renewed every 6 months. Only constant vigilance will keep a carrier in compliance. A good example to follow would be the procedures employed by the National Institutes on Drug Abuse to certify laboratories performing drug tests. They utilize several different procedures to assure the reliability and accuracy of the laboratories' testing. Obviously, the same procedures can't be used, but the various methods of assuring compliance could be adapted to both permitting and rating procedures.

2. Senator Kasten's second set of questions relates to uniformity of hazardous materials regulations. This is similar to the one posed by Senators Hollings/Exon. Therefore, please refer to my answer there.

Obviously, if you have any further questions, I will be happy to provide you with RLEA's views.

Very truly yours,

Lawrence M. Mann
Attorney for
Railway Labor Executives' Association

Senator EXON. Thank you, Mr. Mann. I will look at H.R. 3588. I know you do not have time and I appreciate your being brief. But I do hope that your written statement will include all of the recommendations that you would like to make to the Committee.

Have you submitted a written statement?

Mr. MANN. I have, Mr. Chairman, and it does contain those recommendations.

Senator EXON. It does contain those. We can take a look at those, and thank you very much.

Just one quick question—these—more frequency of accidents, I guess is a way to put it, that you have alluded to, have to be a concern—not just from the hazardous materials area, but safety in general. Have you drawn any conclusions, as one who has been involved in these matters for a number of years, as to what the—is there 1, or 2, or 3 primary reasons for all of this?

Mr. MANN. Yes, sir.

Senator EXON. It is not speed, I would take it. It may be speed in some instances. Is it inspection of track? Is that what it is? What is it?

Mr. MANN. Let us start at the top, Mr. Chairman.

I do not want to be too critical of the Federal Railroad Administration, but let us just look at what is going on there. The last 2 administrators currently are employed by the Association of American Railroads.

I am not questioning their integrity. But the fact is, you know where they are leaning in enforcement. It is just something we have been dealing with, unfortunately, on a political level. The results show that there has not been much enforcement. The railroads know that they can have a train with a number of defects in it, and when an FRA inspector goes to the scene and finds it, they do not fine that railroad at that point.

All that the Federal railroad inspector does is tell the railroad to fix it. If they happen not to fix it, then that defect is sent to Washington for a fine. Next that fine is forwarded to the lawyers at FRA and they negotiate it under the Federal Claims Collection Act.

What we find is that there is, on the average about 7 or 8 dollars per defect in fines that is imposed. So there is no incentive to comply with the regulations in the first place.

Secondly, as I alluded to earlier, the trains are not being inspected, and the Federal Railroad Administration is not doing one darn thing to assure that they are being inspected. They are not requiring competent, trained employees to do that work. They have turned their backs on it.

I think that is the two root causes of the problems that we have in railroad safety today.

Senator EXON. Why would the railroads do that? The first answer, obviously, would be well—I guess what you are implying without stating is that they are not taking a serious look at overall safety because of the expense involved with it.

What else could it be? If they have unsafe tracks and unsafe trains, the railroads are opening themselves up to all kinds of lawsuits of which you and others are very familiar with.

Mr. MANN. Absolutely. The way it works, obviously, Mr. Chairman, is to reduce employment. You can immediately cut out a craft of employees if you do not have them doing the inspecting and testing of trains. Now I am not here to tell you that a certain craft should do it. All I am telling you is that they should be trained. Whoever does it, they should be trained properly.

But a railroad's whole concept is to get the car off of its line. And then it is the other receiving railroad's problem. There is nothing wrong with moving that train quickly. But they should not overlook the fact that there are Federal regulations that require railroads to do a number of inspections. The railroads do not believe that is necessary.

They opposed the Federal Railroad Safety Act in 1970, because they said, "It is not necessary, we can self police." But the history shows they cannot self police. In my judgment we are getting back to that now.

But the whole concept is to cut out a lot of employees, and secondly to get the train off of the system fast and let somebody else worry about it.

Senator EXON. Thank you, Mr. Mann. Mr. McDougall, we appreciate you for your patience all morning.

STATEMENT OF VERNON McDOUGALL, ACTING DIRECTOR, SAFETY AND HEALTH DEPARTMENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. McDOUGALL. Thank you, Mr. Chairman.

My name is Vernon McDougall. I am the Acting Director of the Safety and Health Department of the International Brotherhood of Teamsters.

Our Union represents about a half-million workers in the hazardous materials trucking industry. Thank you for inviting us here today. I want to briefly outline three areas of concern which are dealt with more fully in my written statement. These are worker training, regulation of shippers, and DOT's approach to enforcement.

Mr. Chairman, there is growing concern among our members about their exposures to chemical leaks and spills in the course of truck transportation. They are coming to their local union leaders with serious questions and complaints about the quality and availability of information about these chemicals, about lack of training, and about procedures used to clean up these incidents.

Trucking employers are in the process of recognizing the extent of their responsibilities under OSHA standards to provide special training and other protection to their employees with respect to chemical exposures. It is very important that this progress continue and that any hazardous materials legislation or rulemaking that addresses worker training must complement and preserve OSHA's efforts to protect these workers.

In 1986, the National Hazardous Materials Transportation Advisory Committee recommended a registration and permitting system to cover shippers, carriers and others involved in hazardous materials transportation. We strongly support this concept.

Economic pressures from shippers are frequently felt more intensely by motor carriers than is DOT safety enforcement. New efforts to improve safety in hazardous materials transportation will only succeed by starting with-the group that has the most clout—the shippers.

Mr. Chairman, it is not enough for DOT to write regulations for HAZMAT transportation. DOT needs a credible program to enforce these regulations as well.

In the motor carrier industry, instead of the adversarial role that is sometimes necessary for effective enforcement, we see a program that is much too heavily oriented toward education and free consultation for motor carriers. This has become so pervasive in the Office of Motor Carriers that it gets in the way of effective enforcement.

We urge the Committee to carefully review DOT's basic approach to its motor carrier and hazardous material safety compliance activities.

Finally, Mr. Chairman, I just want to mention the excellent program that is being administered by the National Institute for Environmental Health Sciences for the development of training for HAZMAT transportation workers, emergency responders and others. This is an important program that deserves your continued support.

Again, Mr. Chairman, thank you for this opportunity. I will be happy to try and answer any questions you may have.

[The statement and questions and answers follow:]

STATEMENT OF VERNON MCDOUGALL, ACTING DIRECTOR, SAFETY AND HEALTH DEPARTMENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. Chairman, my name is Vernon McDougall. I am the Acting Director of the Safety and Health Department of the International Brotherhood of Teamsters. I want to thank you for giving us this opportunity to come before you, to address some of the issues of greatest concern to our members today, with respect to hazardous materials in the trucking industry.

The Teamsters Union represents over 500,000 workers who are employed in the transportation of hazardous materials by highway. These include drivers of tank trucks who haul bulk shipments of hazardous materials in quantities up to 10,000 gallons; drivers and dock workers in the freight industry; and many others in a wide variety of trucking-related enterprises.

Worker Training

Mr. Chairman, appropriate training for workers involved in hazardous materials transportation has been an important goal of the Teamsters Union for several years. We recognize how important this is to improve the awareness, knowledge and skills of all workers involved in truck transportation of hazardous materials. In 1985, working together with the largest non-bulk motor carriers of hazardous materials, we fashioned a collectively bargained training program for all bargaining unit employees engaged in hazmat transportation. A copy of a booklet describing this program in detail is attached to my statement. The program specifies the minimum amount of training, frequency of retraining, format, and subject matter.

There is a great deal of concern among our members about the health and safety risks associated with the hazardous materials they handle every day.

I was recently contacted by a Local Union in the Midwest, where the dock workers at one large terminal have identified what they suspect is a high rate of cancer among the older workers. They are suspicious that some of these cancers may be related to chemical spills they have been subjected to over the last 20 or 30 years. At this terminal as well as at many others, our members are increasingly aware of the risks they face from chemical spills. They are concerned about the quality and availability of information about these chemicals, and about the procedures used to clean up these incidents. It is apparent to us that in most discussions of hazmat transportation that take place here in Washington, one of the least considered factors is the exposure of transportation workers themselves to health and safety hazards. I am here today, Mr. Chairman, to try to convey the depth of our members' concerns to your Committee.

Uncontrolled chemical exposures occur virtually every day in the trucking industry. Most of these exposures are not "newsworthy" because they don't tie up traffic or cause evacuations. These are often spills and leaks that occur in the course of loading, unloading and handling hazardous materials at truck terminals and customers' loading docks.

Employers in the trucking industry are in the process of

coming to a better recognition of their responsibilities under OSHA's Hazard Communication Standard (29 CFR 1910.1200) to give these workers basic training and information about the chemical hazards they may face in their jobs; and of their responsibility under OSHA's Hazardous Waste and Emergency Response Standard (29 CFR 1910.120) to provide transportation workers with specific training and proper tools and protective equipment before asking them to clean up chemical spills.

The Department of Transportation's Office of Hazardous Materials Transportation proposed new regulations last year, dealing with training for a variety of workers involved in hazardous materials transportation. We gave broad support to DOT on these proposals. However, we had one area of deep concern that we related to DOT: We urged them to be very careful to write their regulations in a way that makes it very clear that they are complementing, and absolutely not pre-empting, these two OSHA regulations which provide for occupational health and safety training. We believe OHMT understands our concern on this point. We are aware that OHMT officials have discussed this issue with officials at OSHA. It would be a great loss if the positive things DOT is aiming to accomplish with these new rules were to be offset by loss of protection for hazmat transportation workers due to pre-emption of OSHA's enforcement of its standards in this area.

Mr. Chairman, the Teamsters Union also counts among our

membership substantial numbers of police, firefighters and other emergency service workers who may be called upon to respond to hazardous materials emergencies. We share the views of the other public employee unions regarding the critical information and training needs of these workers.

There is an excellent program in place now, for funding and coordinating training programs for emergency responders. This program is being administered by the National Institute for Environmental Health Sciences. Excellent curricula and training materials have been developed under this program by unions, universities, state government agencies, fire departments and other non-profit organizations. Although modest in terms of the federal dollar commitment, this NIEHS program has been one of the real success stories in the area of hazardous waste and hazmat response in recent years. This program deserves Congress' continued support. We are very hopeful that future initiatives in the area of emergency response training can be devoted to growth and enhancement of this ongoing NIEHS program.

I should mention, Mr. Chairman, that as the result of Congressional action last year, the NIEHS program is already broadening its scope somewhat to stimulate new safety and health training programs for hazardous materials transportation workers. This is a very natural compliment to the regulatory roles of OSHA and DOT's Office of Hazardous Materials Transportation. It is one more very good reason why the NIEHS program deserves Con-

gress' continued support as the premier federal effort toward promotion and development of effective training programs for workers in every aspect of hazardous materials transportation, incident response, and waste cleanup.

DOT Enforcement of Hazmat Regulations

Mr. Chairman, it is not enough for DOT to publish hazardous materials regulations. They also need a credible program to enforce these regulations. In the motor carrier industry, instead of the sometimes adversarial role that is necessary for effective enforcement, we see a program that is too heavily oriented toward education of motor carriers with regard to their safety responsibilities.

Every year DOT publishes a listing of all of its hazardous materials penalty actions for the previous fiscal year. In FY 1988, the last year for which this information has been published, DOT had less than $200,000 in penalties against motor carriers for hazardous materials violations, and less than $50,000 against shippers relating to highway transportation. If that sounds like a lot of money, consider that OSHA recently issued one citation against one motor carrier, for over $600,000.

We understand from DOT's Office of Motor Carriers that their new compliance procedures and increased staffing have resulted in an increase in both the number and dollar volume of compliance actions. We think they are on the right track. Now that they have been given all of this new help, it is incumbent on DOT to

use it efficiently -- to get the most "bang" for the taxpayer's "buck." To accomplish this will require a fundamental change in the way the Office of Motor Carriers sees its role. It needs to become more of a "cop," and less of a tutor and hand-holder for motor carriers.

There is nothing wrong with the DOT providing free education and consultation services to help trucking companies comply with its regulations. However, in these times of restrictive budgets, Congress must determine if this is a luxury the taxpayers can still afford. Voluntary compliance with these regulations is, to a degree, a function of how likely one thinks they are to be caught when they break the rules, and how serious the consequences are. In the motor carrier industry today, the chances of getting caught are fairly slim, and the consequences too often amount to a slap on the wrist, so DOT enforcement provides very little incentive for compliance.

Allow me to give you an example which illustrates the weakness in the Federal Highway Administration's approach to hazardous materials safety enforcement. In May, 1989, we learned that a tank truck firm in Virginia was using drivers moonlighting from other carriers, and from the Federal government, as scabs during a strike by one our Local Unions. We filed a complaint with FHWA giving them the names of some of the individuals and their employers.

We suspected that these drivers were not recording the hours

worked for these other carriers on the logs they were required to record for the struck company. -- In effect, they were keeping two different sets of logs. We also suspected that they were also violating the FHWA rules on daily driving time, hours on duty, and weekly maximum hours on duty. We suggested to DOT that this was occurring with most of the struck Company's drivers. This was a "serious pattern of safety violations" if we ever saw one. We asked FHWA to act quickly, because if we were right, fatigued drivers were transporting 10,000 gallon gasoline trucks around the Washington beltway and other heavily traveled roads in this area.

It took FHWA over two months just to find out that the logs they needed to examine were in Delaware, not Virginia. Three-and-a-half months later, and after numerous phone calls and another letter, we received a vague reply that "The Office of Motor Carriers has conducted an inquiry into the violations alleged in your complaint and has substantiated violations of sections of the regulations. Appropriate action is being taken..."

On February 1, more than eight months after receiving our complaint, FHWA had such big news -- by their standards -- that they issued a press release: They had settled the case and collected a penalty of $13,125. It now appears that they conducted a fairly cursory investigation, not even bothering to examine all of the violations we alleged.

Mr. Chairman, under the Commercial Motor Vehicle Safety Act, a driver who cannot pass a hazardous materials knowledge test will not have a job in hazmat trucking after April 1, 1992. A driver who receives two serious traffic violations within three years will lose their right to drive -- and thereby their livelihood -- for at least two months. We are not suggesting that DOT should go on a penalty binge against shippers and motor carriers, but we do believe that the burdens of government enforcement should be felt more evenly by motor carriers, shippers and drivers involved in hazardous materials trucking.

Registration and Permitting for Shippers and Carriers

Mr. Chairman, trucking of hazardous materials is a tremendous responsibility. This is not the kind of responsibility that should be handed to the lowest bidder -- especially without mandating a certain level of competence and care that must be met by every participant.

In 1986 the National Hazardous Materials Transportation Advisory Committee recommended a registration and permitting system to cover shippers, carriers and others involved in hazardous materials transportation. Teamsters Vice President R. V. Durham, a member of that Advisory Committee, has testified before your Committee in the past supporting these recommendations.

The Advisory Committee envisioned a permit system for shippers and carriers as a means "to provide a minimum level of examination and training" for those entities which handle and

transport hazardous materials. It is noteworthy that the Advisory Committee recommended that this take place "concurrent with the Hazardous Materials Driver's License requirement," which Congress did enact that year and which is now being implemented across the country.

The two central elements of the permitting program recommended by the Advisory Committee are that permitted carriers and shippers be required to do business only with other permitted carriers and shippers when dealing with hazardous materials; and that before issuing permits, "DOT should ensure that each such entity is fit to participate in the transportation and handling of hazardous materials by such examination and testing as is deemed appropriate." It is easy to see the relationship that the Advisory Committee saw between the qualifications of drivers and the qualifications of carriers and shippers. Congress has already mandated the driver's responsibility, and we urge you to now complete the equation in order to bring about a more coherent and effective system of regulation for all entities engaged in hazardous materials transportation.

Mr. Chairman, I especially want to stress the importance of the shipper in hazardous materials trucking. The shipper has tremendous economic clout to influence the behavior of the motor carrier -- for better or worse. Motor carriers frequently feel the economic pressures from shippers much more intensely than they feel the potential threat of DOT safety enforcement. Any serious effort to improve safety in hazardous materials trucking must begin with the shipper.

Mr. Chairman, this concludes my statement. I will be happy to try to answer any questions you may have.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
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OFFICE OF
• WILLIAM J. McCARTHY •
GENERAL PRESIDENT

July 30, 1990

The Honorable J. James Exon, Chairman
United States Senate
Subcommittee on Surface Transportation
428 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ernest F. Hollings, Chairman
United States Senate
Senate Committee on Commerce, Science and
Transportation
554 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Exon and Hollings:

Thank you for inviting me to testify at your July 25, 1990, hearing on hazardous materials transportation. The following are my responses to your written questions.

1. Pre-emption: Rather than focusing on the administrative procedures involved in resolving conflicts between DOT, state and local hazmat regulations, we would prefer that the Congress address the larger issue, which is: Why do these conflicts exist in the first place? We believe that the primary reason for state and local governments to attempt to enforce their own hazmat transportation laws within their borders is that federal DOT is doing such an ineffective enforcement job.

The solution, we believe, has three parts:

(1) A new regulatory framework, involving registration and permitting, as we describe in our answer to your second question;

(2) A new information system, along the lines of that proposed by Senator Metzenbaum; and

(3) A more vigorous approach to enforcement, especially by FHWA.

It is useful here to point out that the MCSAP program, in addition to being a tremendous boon to truck safety enforcement, has also been tremendously successful in bring about a remarkable

degree of uniformity in state regulation, even of intrastate trucking. Congress would do well to build on this success, in two ways:

First, I suggest a "special emphasis program" within MCSAP, whereby state and local law enforcement agencies would be subsidized and encouraged to focus enhanced compliance activities on intrastate and interstate trucking of hazardous materials -- applying the Federal regulations.

I will not pretend to be familiar with the problems of hazmat transportation by rail. The Teamsters Union represents a relatively small number of railroad workers. However, my second suggestion is to consider whether something like the MCSAP program could be replicated in the railroad industry.

2. Placards: I did not mean to imply, in my testimony, that the answer to DOT's enforcement weaknesses is as simple as increasing statutory penalties. A much larger problem is that FHWA is so lacking in vigorous enforcement that the existing penalties are very seldom applied -- and then not to their fullest potential. As I pointed out in my written testimony, we recently saw a situation where a bulk hazmat carrier apparently had the majority of its drivers violate hours-of-service regulations, and FHWA could not discern a "serious pattern of safety violations" in that practice. In fact, an FHWA official has told me that FHWA did not even bother to investigate all of the violations we alleged against this company. Nor did FHWA bother to look into the practices of three other bulk hazmat carriers implicated in this matter! Until FHWA's approach to enforcement is drastically overhauled, there is little point in worrying about whether the penalties authorized by Congress are big enough. -- They are not being used. In FY 1988, (the last year for which we have data) FHWA took penalty actions against a grand total of 42 hazmat motor carriers, of which two involved placarding violations. Penalties associated with these placarding violations appear to have come to less than $1,000 -- for the year! FHWA also penalized one shipper for a placarding violation that year. The penalty was $1,000.

An entirely new approach is needed. We advocate a registration program which should, at a minimum, cover all shippers who offer hazardous materials in shipments requiring placards. (We would prefer to see registration of all hazmat shippers.) We also advocate a permit system for carriers which would also apply to any motor carrier of hazardous materials in quantities requiring placards. Registered shippers and permitted motor carriers

should be required to do hazmat shipping business only with each other. DOT should suspend or revoke these privileges for violation of safety regulations, just as truck drivers are now subject to license suspensions under the Commercial Motor Vehicle Safety Act.

DOT should not be given much discretion to decide who to include in its permit and registration programs, or to decide whether to bring an administrative action against a shipper or carrier who violates a placarding requirement or other safety requirement. DOT has amply demonstrated that, given a choice, it will opt against vigorous enforcement.

I hope you find my testimony, and these answers, helpful as the Committee considers legislation to improve the safety of hazardous materials legislation.

Sincerely yours,

Vernon McDougall, Acting Director
Safety and Health Department

Senator Exon. Mr. McDougall, thank you very much. There will be additional questions, I am sure, for the record, for each of you, and I would appreciate that you respond as promptly as you can for the record. We appreciate your coming here.

We know that we are into a very important area, but whatever we do, we want to proceed with all of the knowledge that we can possibly obtain as a Committee in addressing legislation.

Thank you very much and you are excused.

The last panel, today, then is Garry Briese, Executive Director of the International Association of Fire Chiefs; Mr. Frederick Nesbitt, the Director of Governmental Affairs for the International Association of Fire Fighters; Mr. George Miller, Assistant Director, Fire Safety Division of Housing Development; and Mr. Robert McKeon of the Connecticut State Firemen's Association.

Gentlemen, welcome—and a special welcome to you, a special thanks for your courtesy. I must tell you that at any moment those lights might start going on with regard to votes and I do apologize for myself and for the Committee for the inconvenience that we have caused all of you today. It just could not be helped.

Therefore, your statements have been accepted for the record. Let us move ahead as quickly as we can. I would state now that there may likely be additional questions that we would ask that you properly respond to.

But with that, I would first recognize Mr. Garry Briese for his statement.

STATEMENT OF GARRY BRIESE, CAE, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Mr. BRIESE. Mr. Chairman, I am Executive Director of the International Association of Fire Chiefs, and I am here representing Chief Jim Estepp, the President of the IFC.

The fire chief in every municipality is the primary local official having the responsibility for the management and deployment of fire and emergency resources and hazardous materials emergencies. And perhaps even more important than that, the local fire chief is the key advisor to local elected officials regarding public policy pertaining to the emergency management of hazardous materials.

From the IFC's perspective, the problems associated with the accidental release of hazardous materials can best be dealt with, number one, by preventing the incident from happening through the development and enforcement of sound regulations through regular inspections of facilities and equipment; number two, improving the ability of the fire service and other emergency responders to successfully respond to these incidents as they occur by providing reliable and timely information; and number three, insuring those who respond to the events have the proper skills and resources to effectively deal with the problem.

With regard to regulatory action, we feel that more consistent Federal, State, and local regulations would clearly aid in improving enforcement, and therefore mitigating the incident before it starts.

We think it is critical that commodity marking and identification regulations properly reflect the most significant life-threatening hazards associated with any particular product.

The IAFC believes that HMTA must be amended to improve the capability of the local fire service to respond to hazardous materials emergencies. Today we are facing things such as the New York City Fire Department faced when they had to contend with 260 drums of cocaine packed in sodium hydroxide, a highly toxic chemical used as a drain cleaner when diluted. These kinds of things are the complications that we face when we handle hazardous materials incidents, and while the HMTA would not, obviously, address this issue, it is the kind of complex situation that we face on a daily basis.

In previous hazardous materials legislation, the resources allocated for training of local emergency responders was extremely small. In fact, under SARA Title III, there was a mere $5 million allocated through FEMA to help train emergency responders, and Senator, that is simply not enough. We have 32,000 fire departments in the United States, something approaching a million and one-half firefighters, and that is not counting 17,000 police departments.

We urge that more of this type of pass-through legislation and funding continue that would stipulate that no less than 80 percent of those kinds of funds reach the local agencies and not be diverted for administrative costs before that time.

In 1986, OTA reported that 75 percent of the emergency response community lacked the necessary hazardous materials training. While that figure has improved, we do not think that it has improved enough that we should feel comfortable. We believe that the standards, such as NFPA standard 471, 472, and 473, must be referenced in the appropriate regulations to support the HMTA.

The other principal element in the OTA strategy was the provision of adequate local funding which has not been addressed yet and still needs to be done.

The effective management of hazardous materials emergencies still requires the proper immediate action of local first responders and others. The lack of training and equipment to make even an initial response to hazardous materials incidents places the lives of the citizens and the responders in danger unnecessarily.

It is our belief that Federal funds for hazardous materials training should be directed to support existing training systems, such as those offered through the National Fire Academy and at many state and local training academies.

The IAFC further feels that the emergency responder must be provided with complete and full information about hazardous materials in transit, and, I might add, at fixed facilities, in order to take appropriate action and to protect themselves and the public that may be exposed to any uncontrolled release.

We have examined H.R. 2584 and find that we are in agreement with the concepts expressed in that bill, and at this point in time, Senator, that is as far as we can go because we are in the process of analyzing it further. We do have four specific recommendations.

Senator EXON. Mr. Briese, the red light is on. How much time do you need? I am sorry to break in on you.

Mr. BRIESE. Senator, that is enough.

Senator EXON. I am going to be called out of here and the meeting is going to be over.

Mr. BRIESE. Senator, the recommendations are in the written report.

[The statement and questions and answers follow:]

Statement of
Mr. Garry L. Briese, CAE
Executive Director
International Association of Fire Chiefs
Washington, DC
July 25, 1990

Mr. Chairman and Members of the Subcommittee. I am Garry L. Briese, CAE, Executive Director of the International Association of Fire Chiefs (IAFC). I am here today on behalf of Chief Jim Estepp, president of the IAFC. The IAFC is a professional association of the 10,000 fire chiefs and chief fire officers representing the majority of the fire departments which provide fire protection and emergency medical serviceS to most of this nation's population.

The IAFC thanks Senator Hollings, Senator Exon and the other members of this subcommittee for your efforts to address the problems associated with the transportation of hazardous materials by conducting today's hearings on the reauthorization of the Hazardous Materials Transportation Act (HMTA).

The local fire chief, in nearly every municipality in the United States, is the primary local official having responsibility for the management and deployment of fire and emergency resources, as well as the training of personnel for all emergency operations, including hazardous materials. In addition, and perhaps more importantly, the local fire chief is the key advisor to local elected officials regarding local public policy pertaining to the emergency management of hazardous materials.

According to the chief of the hazardous materials response team for city of Chicago Fire Department, Chicago is one of the world's major transportation corridors for highway, rail, pipeline and air traffic. On the Dan Ryan Expressway, a major Chicago highway, there are over 40,000 truck shipments per day. If only 10% were hazardous materials, that would equate to a hazardous materials shipment every 22 seconds, and that involves only one roadway in that city.

The issues associated with hazardous materials planning, prevention, response and clean-up have been the subject of much attention over the past several years from Congress, state and local government, the emergency response community, the general public and the industry. This attention has resulted in the enactment of a number of pieces of comprehensive federal legislation, and a plethora of state and local laws.

Without question, the most recent hazardous materials legislation passed by Congress was Title III of the Superfund Amendment and Reauthorization Act (SARA). Although primarily oriented towards fixed facilities, it has also been successful in focusing attention on the hazardous materials transportation issue. While the philosophy of SARA Title III is certainly well intended and supported by the IAFC, it has also created numerous problems and burdens for the fire service.

Although I realize that the focus of this hearing is the reauthorization of the Hazardous Materials Transportation Act, I would suggest that because they both encompass the safety of the public and the emergency response community from the release of hazardous materials, they are closely related. Consider the following illustration:

• Title III resulted in the establishment of some 3300 local emergency planning committees (LEPC's) nationwide. Each of those LEPC's was charged with the responsibility for developing local emergency response plans. According to the U.S. Environmental Protection Agency (EPA), less than 50 percent of the communities had plans completed by the October 17, 1988 deadline mandated by Congress. Although the percentage of completed plans is now over 60 percent, it is our understanding that EPA has some concern about the quality of some of those plans. The principle reason for the low completion rate has been attributed by many to the lack of funds and resources to support the LEPC's. We feel strongly that although some progress has been made to address the hazardous materials problem, strong support from Congress and the Department of Transportation is essential.

My statement today will review the principal hazardous materials transportation policy and program issues that remain unresolved. Hopefully, through gaining an understanding of the issues from the IAFC's perspective, the Subcommittee will better be able to evaluate the wide range of legislative options before it as it prepares the reauthorization of the Hazardous Materials Transportation Act.

From the IAFC's perspective, the problems associated with the accidental release of hazardous materials can best be dealt with by 1) preventing the incident from happening through the development AND enforcement of sound regulations through regular inspections of facilities and equipment and 2) improving the ability of the fire service and other emergency responders to successfully respond to those incidents when they occur by providing reliable and timely information, and 3) ensuring those who respond to those events have the proper skills and resources to effectively deal with the problem.

Prevention of the Problem

In many respects, the prevention of unwanted hazardous materials releases seems to be the "forgotten" element in society's efforts to manage the hazardous materials issue. The IAFC supports continued federal efforts to minimize the potential of hazardous materials incidents.

The Department of Transportation's Research and Special Programs Administration (RSPA) has done a satisfactory job in carrying its regulatory and hazardous materials inspection training responsibilities and given their resources, has been responsive to the concerns of the emergency response community. RSPA must continue to provide the necessary training resources to state and local agencies so that consistent enforcement practices can be continued.

The inspection and enforcement responsibilities of the other federal agencies, such as the Federal Railroad Administration (FRA) must also be increased. The general aging of the transportation infrastructure nationwide clearly suggests the need to maintain these necessary enforcement programs. Those agencies charged with these enforcement responsibilities, such as the Federal Highway Administration, the Federal Railroad Administration, must be funded at adequate levels.

With regard to regulatory action, more consistent federal, state and local regulations would clearly aid in improving enforcement. The Department of Transportation should serve to assist state and local governments considering regulations so that the broad impact of such regulations are also taken into consideration. We feel that DOT must also continue to vigorously enforce existing regulations, through state and local agencies if appropriate, and move to correct deficiencies that exist with current regulations, particularly with regard to commodity classification. In particular, it is critical that commodity marking and identification regulations properly reflect the most significant, life threatening hazards associated with that product.

Emergency Response

The IAFC believes that HMTA must be amended to improve the capability of the local fire service to respond to hazardous materials emergencies. The problems associated with hazardous materials continue to escalate. Fire departments have seen an increase in the transportation of new and exotic materials, such as molten and cryogenic materials. These materials are transported at extreme temperatures. In addition, the manufacture, distribution and use of illegal drugs and substances has added a new dimension to the hazardous materials problem. Fire departments are now having to respond to incidents involving clandestine drug laboratories and storage facilities. Recently, the New York City Fire Department had to contend with 260 drums of cocaine packed in sodium hydroxide, a highly toxic chemical used as a drain cleaner when diluted. Obviously, the illegal nature of the transport of this material negated any expectation of complying with any package marking regulations. However, the local emergency responder still required proper training and equipment in order to deal with this situation. The fire department's in this country do not have the resources to deal with every conceivable hazardous materials problem, including the storage of illegal drugs.

In previous hazardous materials legislation, the resources allocated for training local emergency responders was extremely small. In fact, under SARA Title III, there was a mere $5 million allocated through FEMA to help train emergency responders. Some of those dollars were to be used for planning purposes and some to support FEMA's Technology Hazards Program. Even with that kind of dispersal, the funds that were able to reach some of the states resulted in effective hazardous materials training deliveries, however, in other states the amount ultimately received by some of the local jurisdictions did not. We urge that more of this type of "pass-through" funding continue, stipulating that no less than 80% of such funds reach the local agencies.

3

The recent establishment of the OSHA Regulations for Hazardous Waste Operations and Emergency Response, local fire department will now be required to further stretch limited resource to comply with these very extensive and expensive requirements. In many cases, such as in the state of New Hampshire, local fire departments will simply cease providing hazardous materials response because of the high cost of compliance with the training and medical requirements.

The industry has begun to assist the emergency response community and the general public, principally due to the impact of SARA Title III. Those industry based transportation planning initiatives have been very well received. The IAFC urges DOT to utilize these private sector transportation planning programs as well as other initiatives.

In their 1986 report, The Office of Technology Assessment (OTA) reported that 75% of the emergency response community lacked the necessary hazardous materials training. In our judgement, in spite of the high priority the fire service has given to hazardous materials training, that figure has not significantly changed. OTA's suggested national strategy for improving the training system, which we still agree with, focused on three components: 1) provide training guidelines appropriate for the different response levels 2) ensure adequate local funding and, 3) provide comprehensive information on existing local resources.

Much progress has been made on two of those elements. The National Fire Protection Association's (NFPA) Committee on Hazardous Materials Response Personnel, on which IAFC participates, recently completed a national competency standard for hazardous materials responders (NFPA Standards 471 and 472), and is now developing a similar hazardous materials standard specifically for emergency medical service personnel. We feel that these consensus standards should be referenced in the appropriate regulations.

The other principal element in OTA's strategy, adequate <u>local</u> funding has yet to be addressed. Local communities still go without the resources to properly provide even the most basic public safety services. Larger jurisdictions, such as those surrounding major metropolitan areas, have sometimes been able to reallocate funds to provide training and equipment. However, a great deal of our nation's fire and emergency medical response is being delivered by departments which have difficulty in providing adequate personnel and financial resources essential for delivering fire suppression and emergency medical services. Many states have moved to try to address these problems by establishing regional response teams. These can be effective in the long term. However, effective management of hazardous materials emergencies still requires the proper immediate action of local first responders and others. The lack of training and equipment to make even an initial response to hazardous materials incidents places the lives of the citizens and those responders in danger unnecessarily.

It is our belief that federal funds for hazardous materials training must be directed to support existing training systems, such as those offered through the National Fire Academy. The resident and field training resources at the NFA are widely recognized and used by fire departments nationwide. The current NFA hazardous materials courses have not been updated or expanded due to limited resources. By using existing systems like the National Fire Academy, the needed training can be targeted to those who can best use it, without having to create new systems or programs.

Hazardous Materials Information

The IAFC feels that the emergency responder must be provided with complete and full information about hazardous materials in transit and at fixed facilities in order to take appropriate action and to protect themselves and the public that may be exposed to any uncontrolled release. We feel that a system must be provided that is dependable, functional in an emergency response environment, and provides accurate information in a timely manner. This includes accurate information on any manifest or waybill and accurate information conveyed on placards or other outside markings. Our experience shows that carriers of hazardous materials are not complying with existing placarding regulations. Until a system emerges that clearly and reliably improves upon the current placarding system, we feel the industry must take the responsibility to ensure that all vehicles carrying hazardous materials convey the hazards of the cargo and that continued strong enforcement regulations are appropriate.

The IAFC supports the concept of a hazardous materials information system proposed in H.R. 2584. Such an information system would provide emergency responders with specific information identifying the contents of hazardous materials shipments.

Recommendations

In reviewing the legislative proposals which have been placed before the Congress this session, we feel that any legislative proposal developed by Congress must include the following elements:

1. Support for the development of hazardous materials vehicle routing standards at the Federal level. The development of a DOT routing standard would establish a consistent framework for the designation of hazardous materials routes at both the state and local level.

2. Establishment of a monitored telephone system for all hazardous materials carriers, which would be consistent with the requirements on shippers in the DOT HM-126C rulemaking pertaining to Emergency Response Communications.

3. Support for the development of a hazardous materials training and planning grant fund. Despite the presence of fee structures in the necessary resources, many local governments are simply unable to obtain the necessary resources.

Additionally, the increasing costs of both providing and maintaining an emergency response capability is climbing drastically due to the new OSHA and EPA Hazardous Wastes and Emergency Response regulations.

4. The development of any federal emergency training curriculum should be consistent with National Fire Protection Association Technical Standards 471, 472 and 473, as well as the related OSHA and EPA regulations on emergency responder training and safety. In addition, the development of any national training curriculum should include emergency response representation from outside of the federal sector, and be delivered through the existing fire service training delivery system.

5. Revenue associated with the collection of any fines and penalties at the state or local level under the HMTA should be specifically allocated to related hazardous materials planning, prevention or response purposes.

The IAFC commends Congress for the strides that have been made over the past several years in addressing the many complex hazardous materials transportation problems. We cannot let the momentum dissolve. This Congress has the opportunity to move swiftly and prudently to address the remaining issues of funding for emergency response training and the improvement of hazardous materials regulations. The International Association of Fire Chiefs is pleased to have the opportunity to offer this Subcommittee our perspective and concerns with regard to hazardous materials transportation and the Hazardous Materials Transportation Act. We stand ready to assist Congress in whatever manner deemed appropriate and necessary. I will be pleased to respond to any questions you may have.

INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

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AREA CODE 202
833-3420

July 30, 1990

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science and Transportation
United States Senate
Washington, DC 20510-6125

Dear Senator Hollings:

This is in reply to the questions contained in your letter of July 25, 1990 following the hearing on the Hazardous Materials Transportation Act.

Response to questions from Senator Hollings and Exon:

• Reply to question one regarding the design and operation of the proposed computer tracking system:

Currently, we do not have a clear understanding as to how the proposed computer will be designed, nor how the system would operate. However, given HR 2584's proposed revenue estimates generated from the fees, we could only endorse the concept with the understanding that the end user fire department (paid or volunteer) would be provided with the necessary resources for total support of the system, including the computer equipment, operations and maintenance, as well as the required training.

• Reply to Question two regarding volume of data:

The potential for error with the proposed system, given the data estimates, is unknown. We would expect that there already exists analysis of the error rates of systems of similar size and complexity. Since the proposal eventually would require complete reliance only on the proposed system, the acceptable "error rate" would need to be very low.

• Reply to question three regarding fatalities related to hazardous materials incidents:

To the best of our knowledge, we are not aware of any deaths of emergency responders related to hazardous materials transportation. The recent incident in Kansas City which resulted in the deaths of six fire fighters involved ammonium nitrate stored in a fixed location, not in transit. This

underscores our desire to have legislation address the need for hazardous materials information at fixed facilities as well.

- Reply to question four regarding CHEMTREC:

We feel that CHEMTREC should be reorganized as an independent entity with its own governing structure. The chemical industry should continue to fund CHEMTREC. The operational and policy issues should be decided by an independent board of directors composed of end users of the system (emergency response, transportation sector, etc).

- Reply to question five regarding the National Institute for Environmental Health Sciences training program.

The NIEHS hazardous materials training program for first responders is certainly an excellent training package. However, because of the wide range of hazardous materials training requirements, it should not be considered as the ONLY acceptable training package. We feel that any acceptable training should be consistent with the hazardous materials response competency provisions of the National Fire Protection Association (NFPA) Standards 471, 472 and 473, and be able to meet the hazardous materials training requirements under the Occupational Safety and Health Administration (OSHA) regulations for hazardous waste and emergency response operations (29 CFR 1910.120).

In our view, the most effective way to augment hazardous materials emergency response training at the state and local level is through the continued support of the existing fire service training system. This system is an effort whereby the National Fire Academy (FEMA), in cooperation with state and local fire service training systems identify the fire and emergency training needs. Then, through the development and delivery of appropriate training programs, needs are addressed. It would seem that the NIEHS hazardous materials training program could very well fulfill the hazardous materials training need of a state or local agency.

Reply to questions from Senator Kasten

Reply to question one regarding improvement of placards:

We feel that non-specific placards, such as "dangerous" should be eliminated. Hazardous materials carriers should be required to display the specific placard(s) of those hazardous materials being transported. In addition, some placards inaccurately state the product hazard, such as the "non-flammable gas" placard associated with anhydrous ammonia. This placard should be changed to "poison-inhalation hazard."

Additionally, the current 1000 pound threshold level for placarding shipments should be lowered to 200 pounds, which would permit improved placarding of shipments.

Finally, we feel that a stronger and more vigorous enforcement of placarding regulations should be exercised.

- Reply to question two regarding the identification system and its accuracy:

In order for the system to function effectively, it may be necessary to establish a new numbering system for transport vehicles. Due to the different vehicle registration systems that exist in various states, using a vehicle license plate may prove unworkable. In some instances, trucks and trailers may have several license plates and several registration decals. Consideration should be given to the system used by the railroad industry whereby each car not only has a distinct car number, but the owner of the rail car can be quickly identified as well.

In order for the proposed system be of value and use, we feel that the system should have a 98% accuracy level (or higher). This is the only system that will provide information about hazardous materials shipments. It **must** be accurate.

For this reason, we feel that the placard system should be kept in place until the tracking system can demonstrate an acceptable level of accuracy.

- Reply to question three regarding the U.S. Department of Transportation's Emergency Response Guidebook (ERG) in reference to a) suggestions for improvement, b) ERG availability, and c) suggestions for improved distribution:

a) The International Association of Fire Chiefs has been working closely with the Department of Transportation with regard to the revision of the ERG. We provided detailed and extensive suggestions to improve the 1990 issue of the ERG. We feed DOT has been responsive to many of our suggestions. We will continue our dialogue with DOT to ensure that the concerns of the fire chiefs are heard.

b) To the best of our knowledge, the distribution of the ERG has been generally satisfactory. The combination of state level distribution points together with sales outlets seems to work well. Most emergency vehicles have a copy of the document available.

c) The areas we feel require improvement include; 1) the classification of materials needs review. It is currently too broad and too general. 2) the provision of additional funds to print more copies of the document; 3) better promotion of the locations where emergency response groups may obtain the publication.

I trust these responses satisfy your questions.

Again, we appreciate the opportunity to provide your committee with a full and complete record of the hazardous materials issue. Please let me know if we can be of further assistance.

Sincerely,

Garry L. Briese, CAE
Executive Director

Senator Exon: Thank you very much.

Fred Nesbitt, you have been here before. I suppose you have spent more time waiting to testify before Congress than you have with your family, but please go ahead.

STATEMENT OF FREDERICK H. NESBITT, DIRECTOR OF GOVERNMENTAL AFFAIRS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Mr. NESBITT. My family consists of a small dog, Senator.

Senator, my name is Fred Nesbitt. I am the Director of Governmental Affairs for the International Association of Fire Fighters, and you have my statement and we have some materials, Senator, we would like to submit for the record to support our statement.

Let me just say that, having heard some of the testimony earlier this morning, I was not sure, sitting in the back of the room, Senator, whether to laugh or to be angry. No one knows more about a hazardous material incident and no one is more affected by a hazardous material incident than a fire fighter. We are the people out there on the front line. It is my people, who I represent, the ones who die, or more importantly, today, with the safety precautions that have been taken, my people are exposed to hazardous materials that result in cancer, that result in other kinds of medical problems that are not recorded in the death count related to this, and I get very concerned when people talk about what is happening out there, what is really going on.

We have got a real problem, Senator. We have got a problem with the current system of placards and manifests. And let me say for the record that placards and manifests kill fire fighters. There is no if, ands, or buts about it. Either through death or through exposure which results in death, our experience tells us that the placards in many cases on these vehicles are simply missing or they are incorrect.

Senator, I know that you have ridden down the road and you see on the side of a truck a placard that is sort of like spring-loaded. It could have two or three different numbers on it. They move them back and forth. Placards do not give us the kind of information that we need when we respond to a hazardous material incident, and oftentimes we find that vehicles without placards routinely turn out to be carrying hazardous cargo.

When you talk about the manifest, and I know some people have been talking about duplicates and triplicates, but the problem remains, Senator, we come on to a HAZMAT incident. A truck is overturned. It is down over a hillside, and let us say it is on fire or it is leaking a substance, so there is a gas coming out of the vehicle. Who has to go into that vehicle to try to find a piece of paper? And it is the fire fighter. And there you are talking maybe not death, but you are talking about exposure and you are talking about tremendous danger involved, and we need a way to get that information quickly, accurately, on site without having to go into the vehicle so we can get it at a distance, make a command decision, and then proceed to respond to that particular HAZMAT incident.

And people were talking about CHEMTREC this morning. CHEMTREC does not work, Senator. It is a farce. Our membership does not use CHEMTREC because in situations where you do not know what is in the vehicle, CHEMTREC is useless. And when we know what is in the vehicle, we have the same manuals that they could read to us and we can respond to it in that particular sense.

Senator, we are advocating a telecommunication system for the identification of hazardous materials, and some people have laughed this morning and said, well, what can a computer do, and I know there have been some shots taken at computers. But we see it as more than just a computer.

We need to know what is moving across this country. The chemical industry says, well, we know. The trucking industry and the railroad industry say, well, we know what is moving across this country. But the fire fighters in Omaha, Senator, do not know what is going through their city. They have no idea how to prepare, what kind of training, what kind of equipment they need.

So we need a system that will not only give us instant access to information on site, but a system that is also going to give us flow studies to tell us what is moving through communities, a system that is going to allow the state emergency management group to monitor all the activities within the state, and a system that is going to provide a communication system in natural disasters such as Hurricane Hugo or the San Francisco earthquake, when the phone lines were down and there were no communications except for cellular telephones. So we support a computer system, Senator. We think it is realistic and it is workable.

On the training issue, let me make one point which is contained in our provision. There is already training being done for hazardous material emergency responders through a grant by the National Institutes of Environmental Health Sciences. We are one of the grantees or other unions, colleges and universities, and non-profit organizations that have developed a curriculum. They are out there training the trainers. For us to give money to other agencies to start the development of a new curriculum and replace all of this would set us way back. There is far too little money, Senator, for hazardous material training. We have a good system. We ask you to fund any money that you have into the NIEHS program, because it has already been adopted by 20 states, the Department of the Navy, and the United States Fire Administration as the official hazardous material training curriculum for emergency responders.

I thank you for your interest and your support on this issue.

[The statement and questions and answers follow:]

STATEMENT OF FREDERICK H. NESBITT, DIRECTOR, GOVERNMENTAL AFFAIRS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Mr. Chairman, my name is Frederick H. Nesbitt, Director of Governmental Affairs for the International Association of Fire Fighters (IAFF), affiliated with the AFL-CIO. On behalf of our more than 180,00 members, allow me to begin by commending you for holding these important hearings.

The transportation of hazardous materials is one of the most serious issues facing the United States Congress. Hundreds of thousands of shipments of dangerous chemicals and materials crisscross our nation every day. An accident of cataclysmic proportions could happen anywhere at anytime. As we learned from the monstrous tragedies in Bhopal and Chernobyl, providing adequate safeguards for hazardous materials is literally a matter of life and death.

Fire fighters have a keen understanding of, and interest in, the transportation of hazardous materials. It is fire fighters, more than anyone else, who are called upon when an incident occurs. Be it a gasoline fire on a barge, toxic chemicals leaking from a truck or lethal gases spewing from a railroad car, fire fighters are the ones who must bring the situation under control and protect the safety and property of the surrounding community.

Fire fighting is the nation's most dangerous profession, and no aspect of fire fighting is more perilous than responding to a hazmat incident. This fact was tragically demonstrated recently with the death of six fire fighters in Kansas City, Missouri. Those brave men lost their lives while fighting a fire at a construction site when a trailer containing ammonium nitrate ignited and exploded. The trailer had no markings indicating its contents, and the fire fighters had no access to information which could have warned them of the danger. The only placards on the trailers read, "Please Drive Safely." Fire fighting is a dangerous job, and we accept that. We can not, however, accept this type of needless and preventable tragedy.

Without prompt action by this Congress, the number of fatal hazardous material incidents will surely multiply. Chemicals and other hazardous materials are increasingly becoming a part of our daily lives. As the amount of hazardous material increases, so does the likelihood of a disaster.

Nor is there any area of the country that is safe from the dangers posed by these materials. I was recently speaking with fire fighters from your home state, Mr. Chairman, and they were telling me of their fear of a major hazmat incident occurring in downtown Omaha, the most heavily populated area of Nebraska. As you are aware, Mr. Chairman, Omaha is a major transfer site for hazardous cargo. Chemicals play a vital role in the state's agricultural economy, and numerous hazardous materials are shipped into Omaha everyday where they are repackaged and then shipped out to rural parts of the state. With 5 major railroads, a major barge artery (the Missouri River) and a major interstate highway (I-80), it is virtually impossible to anticipate the location or character of potential hazmat incidents. The only thing Omaha fire fighters are sure of is that a major hazardous material incident *will* happen and that they currently lack the resources to deal with one, including access to information and the knowledge about what hazardous materials are coming through their community.

Mr. Chairman, most of the time and energy Congress has devoted to the transportation of hazardous materials is focused on preventing incidents. We certainly concur that prevention should be a major goal, but it is important to remember that no prevention program is foolproof. Accidents do happen. Congress has the ability to assure that when an incident does occur, fire fighters will be fully equipped and informed to minimize the damage and protect the health and safety of people in the community. We urge the Committee to address these concerns in any hazmat transportation bill that you approve.

There are two things the United States government can do today to maximize the effectiveness of hazardous materials emergency response. The first is assuring that reliable, comprehensive information is available to emergency responders at the scene of a hazmat incident. The second is providing training for emergency response personnel to assure that every fire department is fully aware of the most effective mitigation strategies and techniques. I would like to address each of these issues in turn.

INFORMATION

When responding to a hazardous materials incident, the greatest need of emergency responders is access to quick, reliable information. The diversity and complexity of chemical reactions make it impossible to develop a standard operating procedure applicable to all hazardous materials incidents; every incident has unique circumstances, presenting diverse dangers and requiring a customized response. Chemicals react differently when exposed to air, water, clothing, other chemicals or even human tissue. For example, the most common method of extinguishing a blaze -- applying water directly to the fire -- can not be used in many instances since certain chemicals react violently when exposed to water. Additionally, when burning, many hazardous materials release toxins into the atmosphere thus raising the possible need for community evacuation.

Accessible time-critical information is needed both to identify the specific hazardous materials involved in an incident and to provide guidance on appropriate management of the incident, ie., the most suitable method of extinguishing the blaze or containing the spill, evacuation procedures, possible contamination, protective equipment and health risks.

The system now in place for providing this information to emergency responders is hopelessly flawed. Currently, a fire fighter arriving at the scene of a hazardous materials incident must attempt to identify the cargo using the placard on the vehicle and the shipping papers, or "manifest", which is stored inside the vehicle. The problem with placards is simply that they are missing or incorrect with such frequency that fire fighters learn early in their careers to disregard them. Vehicles without placards routinely turn out to be carrying hazardous cargo, and pose a serious danger to fire fighters and the community. The unreliability of placards has rendered them essentially useless since emergency responders feel it is safer to ignore them than risk them being wrong.

Manifests pose a different problem. Although generally accurate, manifests are stored inside vehicles and thus are unavailable in many instances. If a truck is on fire or if a hazardous substance is leaking inside a vehicle, it becomes unacceptably dangerous for fire fighters to enter the vehicle in search of the manifest.

The information available about managing a hazardous materials incident is also seriously deficient. CHEMTREC, a telephone reference database operated by the chemical industry, is currently the main source of such information. Our members consistently report that what little information CHEMTREC can provide is often inadequate. And CHEMTREC is completely useless in situations where the emergency responders do not know what hazardous materials are present at an incident.

What is needed is an immediate and reliable method of identifying hazardous cargo that does not needlessly place fire fighters in excessive danger, and a way for emergency responders to obtain helpful, detailed information about responding to incidents involving a variety of materials.

Fortunately, advances in modern telecommunications and computer technology have made possible the creation of sophisticated information systems that are ideally suited for identifying hazardous materials in transit. And the cost of complying with such systems is substantially cheaper than compliance with the current system.

Such a state-of-the-art system could provide fire fighters and police officers real-time information on any hazardous shipment, quickly and accurately. The computer system would also give them information on how to respond to the incident, what protective clothing to wear, what are the health risks and whether or not areas need to be evacuated. This system would also ensure that there is an accurate reporting of all incidents and deaths. Currently it is not unusual to read about a hazardous materials incident in the newspaper and for it not to be reported.

Flow studies would be generated giving fire and police vital information about what materials are traveling through their cities

and counties so there can be planning, training and equipment to meet any major disaster. Right now, we can only guess what we might be dealing with - and that doesn't seem fair when one considers the fact these public safety officers are putting their lives on the line and they could have access to this information.

This computer system would allow the state emergency management group to monitor all incidents in the state and respond to major hazardous materials incidents before being called by the local authorities. And lastly, such a system would ensure there is full communications available in natural disasters - such as hurricane Hugo or the San Francisco earthquake - where phone lines were down and fire fighters had to rely on celluar telephones to conduct simple communications. Fortunately, we did not have a major hazmat incident (that I know of) for we would have been at a distinct disadvantage. The computer system would be linked to a telecommunication network that would avoid such problems.

The creation of this computer system is incorporated into S. 2318 authored by Senator Howard Metzenbaum, and we offer our enthusiastic endorsement of this provision. We hope the Committee will give serious consideration to this language in drafting its legislation.

Unfortunately, those who oppose this legislation have made several false statements about its application. Let me set the record straight at this point. First, only those shipments that are currently required to be placarded would be entered into the system - not every hazardous shipment such as one can of hair spray.

Second, the fee would be paid by the generator or shipper at the point of origin and there would only be one fee. There would be no fee charged to the carriers - truck companies, railroads, etc. If the shipment is moved to a break out point and then placed into multiple carriers, there would not be an additional fee. There would be the requirement of a new manifest, which they have to do anyway under current regulations.

Third, there would be no delay in entering data into the computer as the operators of the system would have to ensure access to meet the needs of the industry. And, all manifests are not

generated by a company at once - as they are generated they would be entered into the computer system electronically from the generator's computer.

Fourth, it is alleged that the costs to the industry will be a great burden. This is not true. While the system we envision will cost money (a fee charged to the generators or shippers) there will be savings in that manifests and placards would not be required for hazardous materials shipments; coordinating manifests, placards and vehicles would no longer be a time consuming/labor intense cost; and annual reports will be provided by the computer firm to the generators to help them comply with complicated federal reporting requirements now that are currently mandated of all hazardous material shippers.

Last, there would be a real information database that fire fighters and police officers would have at their fingertips and on-site to respond to hazardous materials incidents. No longer would they have to rely on CHEMTREC, which many shippers do not subscribe to, and which is inaccessible when telephone lines are down.

For all of these reasons, Mr. Chairman we strongly urge you to support legislation which replaces the manifest and placard system with a modern telecommunications cargo identification system.

TRAINING

Although there is widespread consensus that additional emphasis must be placed on hazardous materials training for emergency responders, there is disagreement about the best way to accomplish this goal. The approach taken in legislation under consideration in the other chamber is problematic, and the fire service is united in its support for an alternative proposal.

This draft proposal makes training money available to states to implement a curriculum which will be developed by eight governmental agencies: DOT, FEMA, NRC, EPA, DOL, HHS, Coast Guard and the Department of Energy. These agencies have historically been

unable to cooperate successfully on any issue, and have repeatedly demonstrated disdain for worker safety and health. Implementation of this curriculum directly threatens the safety of fire fighters by assuring that hazardous materials training will be less than adequate.

Such a training approach will move into a regional approach, with wide variances in training hours, standards, definitions of first responders and certification. Additionally, these agencies have historically ignored input by labor (fire fighters) and management (fire chiefs and fire marshalls) in designing any training program. Instead, these agencies tend to create conflicting jurisdictional squabbles and mountains of paperwork. Currently, when there is a hazmat incident, the fire service takes control. Under this proposal, eight agencies will take control, with the fire service answering to these agencies.

While it may seem minimal, there are very key issues to be decided in hazmat training: definition of first responder vs emergency responder, cleanup, regional vs national training, certification of training, certification of instructors, hours of training, and who does the training. And all of this costs money, which state and local governments do not currently have.

A similar proposal has recently been put forth by the Department of Transportation. DOT is advocating a 5 agency, $44 million training program financed by as yet unspecified user fees. This proposal suffers from the same inherent flaws as the draft proposal discussed above, and we are equally opposed to it.

As an alternative, we suggest that all funding for training grants be administered through the National Institutes of Environmental Health Sciences (NIEHS) utilizing a curriculum which is currently being developed by the IAFF under a grant program established under section 126(g) of the Superfund Amendments and Reauthorization. The first phase of the NIEHS/IAFF curriculum, which is intended for first responders, is already completed and has been adopted as the official training curriculum by twenty states, Department of the Navy and the United States Fire Administration. The training materials are supplied to the state fire marshals and local fire departments in the form of a video tape/slide program and

training materials that can be used at the local level. The cost of this training program to the state and local is zero dollars - the cost to develop it was funded by the federal government. We believe any additional funds should be utilized to further distribute this curriculum, train trainers and provide on-site training. The other two phases of the curriculum--one for hazmat team members and the other for specialists--are due out soon. This curriculum assures that all emergency response personnel have sufficient training and are adequately prepared to address a hazardous materials incident.

Similar curricula are being developed under the same grant proposal and agency by other unions, colleges and universities, and non-profit organizations for other emergency responders. These include individuals who are responsible for emergency response at fixed sites, industrial plants, railroads, etc. Any diversion of funds from this NIEHS program or money for creation of a new curriculum to replace it would be money spent unwisely and would undo all the excellent work done in this area. There is a shortage of money for hazmat training--why duplicate and undo what had been done and what is working very well today? Instead, I ask you to add to the funding so this training can be expanded and full implemented.

With your permission Mr. Chairman, I would like to submit for the record correspondence and other documents attesting to the NIEHS/IAFF curriculum's effectiveness and widespread support within the fire community.

In conclusion, Mr. Chairman, I once again wish to thank you for holding these important meetings. The IAFF is excited about the prospect that an issue of paramount importance to the fire service--hazardous material transportation--will be addressed in this Congress. We look forward to working with you on this legislation, and we are optimistic that language can be worked out to ensure the safe transport of hazardous cargo throughout our nation.

Senators Hollings and Exon

HAZARDOUS MATERIALS TRANSPORTATION HEARING 07-25-90

FOLLOW-UP QUESTIONS FOR FREDERICK H. NESBITT

Computer Tracking

1. Some of you raise the point that hazardous materials shipments tend to be routed through the least populated areas which are most dependent on volunteer fire fighters. You further indicate that obtaining sufficient support for sophisticated equipment and specialized training is difficult, at best, in many of these areas. Given this scenario, do you believe these smaller communities would have the ability to purchase a computer system which could handle approximately 1.4 million shipment reports on a daily basis (as CMA estimated the Applegate bill would require)? How have your organizations endorsed this concept?

2. With the voluminous amount of data that would have to be entered into a computer system, what is your view of the potential for error in such a system?

3. Are you aware of any transportation-related hazmat accidents in the last five years in which emergency responders lost lives because the hazardous material was not known?

CHEMTREC

4. From your experience, what improvements are needed in the CHEMTREC phone system?

Responses to questions from Senators Hollings and Exon:

1. This question is based on an erroneous assumption of how the centralized computer system would function. There would be no need for "smaller communities....to purchase a computer system which could handle approximately 1.4 million shipment reports on a daily basis."

Rather, there would be only one main computer into which all of these shipments would be entered. Minimal equipment would be necessary to access all information stored in this main computer. Portable "workstations", for example, are briefcase-sized computers currently being manufactured by several companies. Workstations are expressly designed for communicating with large centralized databases, and the cost of one of these units to a small community would probably not exceed $5,000.

Moreover, under the provision of HR 2584, smaller communities would not even be required to make this modest purchase. The legislation establishes a non-profit foundation, funded by the same user fees used to operate the computer system, which could purchase equipment for the poorer communities.

2. Although no system is 100% foolproof, the potential for error in the system envisioned by HR 2584 is extremely low. Several checks can be built into the computer which will make the information provided by this system far more reliable that information currently available from placards and manifests.

Some of the potential safety features include pre-entering correct codes for all hazardous materials against which the computer will automatically check every entry. This will ensure that every entry corresponds to an actual hazardous material, and any "garbage" entries would be rejected. The computer could also be pre-programmed to know the types of hazardous materials shipped by each hazmat generator. The computer would check all entries against this list to ensure that the name of the material entered is indeed a material which that particular company handles.

The number of security systems and fail-safe measures that can be added to a computer are limited only by our imagination. This compares to the current manifest and placard system where the smallest typo or a loose screw can nullify the entire information system.

3. The incident which comes immediately to mind is the 1988 tragedy at a construction site at Kansas City, Missouri at which six fire fighters were killed because they were unaware that trailers parked at the site contained a powerful explosive. These men were not rookies, they had 123 years of experience between them and had hazmat experience as well. But they had no way of knowing that those trailers contained explosives. The only placard on the trailers read, "Please Drive Safely."

But the need for this computerized system can not be measured by past fatalities alone. The danger we seek to avert is not just that a few more fire fighters may be killed in the near future, albeit saving the lives of fire fighters has been a motivating factor in our involvement with this issue. Rather, the danger is the very real potential for a disaster of cataclysmic proportions. Hazardous materials are crisscrossing our country every day that, under the wrong conditions, could decimate an entire community. The possibility for a Bhopal-on-wheels is much greater than any of us want to imagine. At a minimum, our government has an obligation to reduce the potential for such a tragedy.

In concluding our answer to this question, we find ourselves asking a question in return. The implicit assumption in this question is that there is a certain level of death which would justify the creation of a basic safety measure. If the six lives lost in Kansas City are not enough, what number would be sufficient? Do ten more fire fighters have to die before we are given the tools necessary to do our jobs? Should a minimum of twenty grieving widows be found before Congress will act? Is fifty children who will never see their father again an adequate level of suffering? Rather than attempting to quantify how many lives must be lost before Congress acts, why don't we act now to *prevent* those tragedies.

4. CHEMTREC is so deficient that no amount of tinkering will have a substantial impact on its effectiveness. Only a complete overhaul will make this system worthy of continuance.

If such an overhaul is to be undertaken the following are some of the essential ingredients of creating a workable system:

① The office must be staffed by experts, knowledgeable about the containment and management hazmat incidents.

② The operation should be run by a disinterested party, rather than the Chemical industry.

③ The information must be accessible in ways other than voice communication over telephone lines. Voice communication is extremely inefficient and telephone lines are often unavailable during disasters such as hurricanes or earthquakes. Satellite hook-ups, modems, and facsimile machines are bare-minimum essentials.

Senator EXON: We have received a statement from State Senator Hickey, who, unfortunately, could not be with us today. But we have his statement which we will ask to be inserted into the record.

Mr. McKeon, welcome.

STATEMENT OF ROBERT MCKEON, CONNECTICUT STATE FIREMAN'S ASSOCIATION, ON BEHALF OF THE NATIONAL VOLUNTEER FIRE COUNCIL

Mr. MCKEON. Thank you, Senator. My name is Robert McKeon. I am Vice-chairman of the National Volunteer Fire Council which represents one million volunteer fire fighters. Personally, I have had 45 years of experience as a volunteer fire fighter, 30 of these years as a Chief. And professionally in the field I have worked in transportation, and have just retired as a shipping and receiving supervisor, and now am working with the State of Connecticut Department of Transportation.

Mr. Chairman, I would like to begin by thanking you personally for your long-standing interest in special problems and the needs of the volunteers. Your people from Nebraska have indicated to us that you are no newcomer in this area.

First of all, I would just like to go through briefly some of the problems that we see. First, we need it in training. And I say with deep regret that, more than anything else, volunteers—and I believe the career fire departments in most states—lack training to deal with hazardous material incidents. Our official policy, the volunteers, is if that fire fighter is not trained, he or she should not respond. We think that this makes perfect sense. Unfortunately, it is no longer legal. The new OSHA requirements require that all fire fighters who make reasonable—face HAZMAT incidents, must be trained to deal with these. Every home, every car could be a hazardous material incident. Congress and the Department of Labor no longer give us that choice.

Second, we need equipment and apparatus. OSHA makes it very clear that we must protect our people in the course of their work. The individual—it may cost anywhere from $5,000 or more, or there could be up to 16 different requirements of suits to meet a HAZMAT incident.

Third, we need the information. We do not think that the data tracking system described by the Congressman Applegate bill is practical. We have received briefings from the Congress itself and also additional information from the Fire Fighters' Union. But we do agree with the union that the information we now receive from the chemical industry is inadequate and often not timely.

I personally participated in a program sponsored by the Chemical Manufacturers Association to identify ways of improving CHEMTREC. That was 2 years ago. We see very little difference, although we appreciate the industry's concern. Placarding simply is not reliable.

Fourth, we need funding. This weekend in South Sioux City, Nebraska and Gering, Nebraska, they will be running fundraisers so that they can get equipment. We are expected to protect our public from these incidents without the funding. We have asked almost

nothing from the Federal Government, and with all respect, Mr. Chairman, we have received almost nothing.

In closing, let me read a key paragraph that we have taken our stand, and I quote:

> Although volunteer fire departments have pledged to protect life and property, it is unrealistic and potentially dangerous to expect all departments to be prepared to respond effectively to all incidents. Pressures on departments to respond place a fire fighter at serious risk, stretching resources thin, and may result in less overall public safety. Fire departments must be able to respond to a basic fire protection. Fire departments should put greater emphasis on fire fighters' safety and hazardous material resources. The department should emphasize training of all personnel to first respond to Hazardous Material Incidents and seek management skills for offices as priorities.

Mr. Chairman, as you work through this difficult, troubling issue, please keep the volunteer fire fighter in mind. In all societies, there is no group that takes so much sacrifice and asks for so little.

[The statement follows:]

Statement of
Robert McKeon
Vice Chairman
on behalf of the National Volunteer Fire Council

My name is Robert McKeon and I am vice chairman of the National Volunteer Fire Council. The Council -- through its state associations -- represents more than 1 million volunteer fire fighters nationwide.

Personally, I have more than 45 years experience as a volunteer fire fighter, 30 of those years as chief of the Occum, Connecticut fire department. In addition, I have worked professionally in the field of transportation, having just retired as shipping/receiving supervisor for the Amstar Corporation, and now working for the Department of Transportation.

Mr. Chairman, may I begin by thanking you personally for your long-standing interest in the special problems and needs of volunteer fire fighters. I am told by our members from Nebraska that you are no newcomer in this area.

Let me begin by saying there is often little difference between a hazardous materials incident on the road, at a factory or in someone's home. There may be differences in terms of how complicated or serious an incident is, but in all cases there are just a few things a fire fighter needs to respond. The three are of equal importance.

The first is training. I say with deep regret that, more than anything else, volunteer and, I believe, career fire fighters in most states lack adequate training to deal with hazardous materials incidents.

Our official policy is that if a fire fighter is not trained, he or she should not respond. We think that makes perfect sense. Unfortunately, it no longer is legal. New OSHA regulations require that all fire fighters who might reasonably face hazmat incidents, must be trained to deal with them. Every house and car fire involves hazardous materials, Mr. Chairman. Therefore, every fire fighter must be trained. Congress and the Department of Labor no longer give us the choice.

Mr. Chairman, without adequate training, we are asking some very brave people to take some very foolish chances.

Second, we need equipment and apparatus.
Again, OSHA makes it pretty clear that we are to protect our people in the course of their work. No one kind of protective gear suits all situations. An individual suit might cost $5,000 or more. A department -- or perhaps a regional group of departments -- might easily require 16 suits, some of which would haver to be discarded after one use.

Sir, there are volunteer fire departments without the funds to buy decent equipment to fight house fires.

Trucks are another major expense. It goes without saying that if a protective suit is expensive, specialized trucks are very expensive. Again, there are many small departments nationwide relying on 30 year old, third-hand firetrucks.

Third, we need information. We need it before an incident and we need it during an incident.

We do not think that the data tracking system described in Congressman Applegate's bill is practical. We have received a briefing from the Congressman himself and we have received additional information from the fire fighters union.

But we do agree with the union that the information we now receive from the chemical industry is inadequate and often not timely. I personally participated in a program sponsored by Chemical Manufacturers Association to identify ways of improving CHEMTREC. That was two years ago. We see very little difference although we appreciated the industry's concern.

We already know what is stored in our communities. We need to know in reasonably specific terms what is coming through our towns and villages. Most important, we need to know what is in that green cloud billowing from a tanker truck. Placards simply have not been that reliable.

Fourth, we need funding.

Mr. Chairman, in your own state this weekend there will be pancake breakfasts, barbecues, car washes and cake sales to help volunteer fire departments. Some departments receive local tax support. Others do not. Frankly, some have plenty of funding. Others have trouble buying gas for their trucks.

We are expected to protect the public from these incidents. We have asked almost nothing from the federal government and, with all respect Mr. Chairman, we have received almost nothing.

But, I can tell you sir, that we need help.

In closing, let me read some key paragraphs from our policy. Technically, Mr. Chairman, if a fire department were to follow it exactly, that department would be breaking the law. Yet, Mr. Chairman, I think you will find these words logical and reasonable. I quote:

> Although volunteer fire departments are pledged to protect life and property, it is unrealistic and potentially dangerous to expect all departments to be prepared to respond effectively to all incidents.
>
> Pressure on departments to respond, places fire fighters at serious risk, stretches resources thin and <u>may</u> result in less overall public safety.

Therefore,

1. Fire Departments must first be able to provide basic fire protection. Any department inadequately equipped and trained to handle these responsibilities is, by definition, ill prepared to deal with more sophisticated incidents.

2. Departments should place a far greater emphasis on fire fighter safety in hazardous materials responses.

   Unless the lives of the public are clearly threatened, fire fighters should place their own safety above the loss of property. No untrained, inadequately equipped personnel should be permitted to attempt suppression of hazardous materials incidents.

3. Departments should emphasize training of all personnel to "First Responder" status and seek management skills for all officers, as priorities.

4. The need for specialized equipment and apparatus should come as the result of a regional assessment of how all existing resources are being used, the probability of incidents based on most travelled routes, the ability of fire fighters to use the equipment and apparatus effectively.

5. Departments should work to utilize and improve existing, known resources; and in the spirit of volunteerism, seek public/private partnerships.

Mr. Chairman, as you work through this difficult, troubling issue, please keep the volunteer fire fighter in mind. In all of society, there is no group that makes as much of a sacrifice and asks less.

But, today, we ask for your leadership and support.

Senator EXON. Thank you, Mr. McKeon.
Mr. Miller.

STATEMENT OF GEORGE MILLER, ASSISTANT DIRECTOR, FIRE SAFETY DIVISION OF HOUSING DEVELOPMENT, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE FIRE MARSHALLS

Mr. MILLER. Mr. Chairman, my name is George Miller. I am Chairman of the Legislative Committee of the National Association of State Fire Marshalls. On their behalf, I would like to express our appreciation for this opportunity to testify before this Subcommittee. We have been working with and will continue to work with the National Governors' Association in developing a recommendation for legislation to this Subcommittee.

Sir, I first became a fire fighter in 1967 in Bayonne, NJ. Since that time I have held many positions in the fire service. Today, I serve as an assistant director in our State's Department of Community Affairs, in charge of fire safety—a position generally called "state fire marshall" in other states.

I will confine my comments to a discussion of the nature of the problem faced by the fire service relative to hazardous materials incidents, and some criteria which we hope you will find useful in arriving at effective, affordable legislation aimed at addressing the problem.

Let me begin by placing this issue in context:

The American Chemical Society's Chemical Abstract Service numbering system lists 10 million different chemicals known by 15 million different names. As many as 14,000 new chemicals are added to that list each week.

As of April of this year, more than 100,000 of those chemicals were regarded as hazardous and of those 366 were considered extremely hazardous.

Hazardous materials may be encountered en route, in manufacturing and storage facilities and in private residences. An estimated 500,000 hazardous materials shipments are made each day by truck, rail, pipeline and by air. Most proceed as planned yet traffic and other accidents affect tens of thousands of shipments annually. Relatively few are recorded by federal authorities because of what we believe to be lax reporting requirements.

The vast majority of fire fighters are not trained or equipped to properly respond to hazardous materials incidents at fixed storage facilities or in transit. And yet, often they are exposed not only to dangerous chemicals—some of which pose almost insurmountable immediate hazards—but to the chronic health effects of responding to many incidents over time. Throughout the United States, fire fighters have little choice. The public expects fire fighters to bear the responsibility for public safety during a hazardous materials incident.

In order to meet those expectations and to provide for their own health and safety, fire fighters need three tools of equal importance: Training, proper equipment, and accurate and timely information.

Very few of the Nation's estimated 30,000 fire departments are so equipped. Industry efforts to provide support have been well intended but fall far short of being adequate in all three categories.

To make matters worse, a perplexing array of Federal environmental, labor, and health statutes requires that fire fighters have the necessary equipment, specialized training, hazard-related information, and command procedures to respond effectively to incidents they are most likely to encounter. Yet Federal programs provide almost no resources to help local fire departments to comply. Recently adopted OSHA regulations set training standards which must be met by every fire department in the Nation. A fire chief whose department fails to comply, risks criminal and civil prosecution, even when denied the resources to obey Federal standards. Whether volunteer chiefs, who constitute the overwhelming majority of fire service leadership, will choose to continue to serve when they face such sanctions remains to be seen.

The few pilot and demonstration projects from a multitude of competing Federal agencies in this area have accomplished little. None has resulted in approaches which can be uniformly applied nationwide. These limited opportunities and conflicting regulations have resulted in frustration, confusion, and in some cases, inaction by state officials, local emergency service workers, and industry.

My final point in discussing the problem we all face is especially directed to those of you from largely rural states, such as Nebraska, Nevada, West Virginia, Tennessee, South Dakota. Hazardous material shipments tend to be routed through the least populated areas, which are most dependent on volunteer fire fighters. Though many volunteer departments receive local tax support, most depend as well on charitable contributions. These sources are unlikely to provide the support for the sophisticated equipment and specialized training needed to address the hazardous materials issue. We are, of course, deeply concerned with what happens in our more populated suburbs and cities. But whatever solution is agreed upon must deal with the 25-member volunteer department in that small town along the interstate highway that crosses your state.

Today you will hear testimony describing various approaches to the hazardous materials incidents response problem. You will hear from people who say that more study is needed. We do not argue with that.

You will hear from experts who will say that fire fighters need much better information and faster response at the scene of each incident. We agree.

Mr. Chairman, we are not aware of any Federal legislative language in specific bills or amendments that deals with this issue in a way that will help the fire fighter protect his community and himself from a hazardous materials incident. In our view, the right piece of legislation will provide three tools, all of equal importance. First, useful and timely information to help fire fighters plan what actions they will take in the event of various hazardous materials emergencies. Second, protective gear and response equipment to ensure prompt, effective and safe response in each emergency. And third, training to help local fire departments comply with current and future Federal and state regulations which are intended to

protect the health and safety of fire fighters. Very few of the estimated 30,000 fire departments in our Nation are so equipped.

All of this will cost money. Hazardous materials crisscross the United States. Emergency services they demand should not be funded locally. It is important that implementation of any new law be directed by the U.S. Fire Administration, supported Federally by the Center for Fire Research and the National Fire Academy, and at the state level, through the respective state fire marshalls or comparable offices. No other mechanism is capable of understanding and reaching individual fire departments.

America trusts its fire fighters to respond to the tens of thousands of chemical spills and other environmental emergencies which occur nationwide every year. Fire fighters do so routinely at considerable personal risk. Mr. Chairman, fire fighters deserve, at a minimum, the few tools I have described. Without those tools, more than one million very brave men and women will remain in an intolerably dangerous situation. Thank you.

Senator EXON. Gentlemen, thank you very much for some very interesting testimony. And, of course, we have accepted into the record your full testimony. Of all of our panels this morning, I think I have looked forward to hearing from you because you are down there and you represent the people where the hazardous chemicals meet the road or meet the rail. And, you know, this has to be a major concern, not only for the safety of those individuals, but providing the wherewithal somehow to give them the means in an expeditious fashion to know when to attack the problem and how not to attack the problem. And so it is a very, very complicated situation.

But I assure you that we on the Committee, and the Chairman in particular, have been very much concerned about this. I was about to ask the question that you fortunately did, Mr. Miller, in your testimony.

We recognize that there is a tendency to route hazardous materials, for obvious reasons, through the less populated centers. And therein lies the proposition to where fire fighters are fire fighters and they are all great people. Some of them have more time and more money to do things than do the volunteer firemen, per se.

So we recognize these problems. You indicated you did not see anything in the bill, as I took it, to address this. Well, I take great exception to that. I think we have made—maybe not enough—but we certainly have recognized in the bill the providing for some money to do some things with regard to regional facilities where fully trained experts could, with dispatch, get to someplace.

We are thinking about having some of these teams maybe be working with the National Guard, which in almost every state does have helicopters that could be used on an emergency basis and could be trained to do that.

So I do not think that we have not done anything—maybe we have not done enough.

Mr. MILLER. Maybe I should make myself more familiar with that budget language.

Senator EXON. So I think it is vitally, vitally important.

Now let us get down to the matter of how we can best accomplish this. Fred, I listened with great interest to your testimony

that was buttressed by other testimony on this panel, with regard to the fact that in too many cases today, there certainly is a situation where a fully trained or a minimally trained firefighter comes on the scene of these accidents and really does not know what to do. And for his own safety or for the safety of others that he is sworn to protect, therein lies a perplexing problem: how do we get to that in the most expeditious fashion?

And you were talking, Fred, about trucks going down the road with things flashing, you cannot see them. I take it, then that you are not satisfied with the manifests, and I think that came up earlier in the testimony.

I never could quite understand how a manifest is particularly important if it is in the truck or in the train, because you cannot get to it in most instances. It is nice to know that when the fire dies down and when the toxic fumes have all been released, with proper attire we might be able to go in and discover after the fact what we should be doing. Therein lies the perplexing problem that this Committee is trying to address.

That is why all through this lengthy hearing this morning I have been asking questions about "How can we improve?" And I think there are some things that we need to do to improve, somehow, the knowledge that the first person on the scene of the tragedy can begin to get some understanding of what is going on.

Are there specific examples that you could make, individually or collectively, as to what we might do? Forgetting the manifests, for the moment, what about that truck that is on fire or smoldering or has some fumes coming out of it? Is there no way that we can get tough?

I heard some testimony that said that many of these trucks that are out there simply are not properly identified as carrying toxic chemicals. That is terrible. There should be strict penalties on that that have teeth in them, to make sure that that does not happen.

And the major expense for this has to go back—for these warning signs—has to go back to the trains or the trucks or, properly, the entities that are shipping this substance in the first instance. That is where the money has to come from, in my view, the major part of it.

Now what can we do, forgetting manifests? What can we do in the opinion of any of you, to have—Assume we have strict enforcement of proper identification of hazardous materials, then can we not do a significantly better job than we are doing at the present time with regard to markings or flags or what have you—to tell that fire fighter what the problem is, what is contained in that problem that he finds himself confronted with without having to first check with a computer through some system? Is that not what we should address first?

Fred.

Mr. NESBITT. Well, yes, I mean that is part of the problem. I mean obviously when you have got a HAZMAT incident and you come on site, the first thing you need is information about what is in that particular tank car with that particular vehicle.

Hopefully we can get the information quickly, accurately and from a distance—which goes back to the manifest problem. The problem is, the shipper and the carrier knows what is in that vehi-

cle, but unfortunately, the fire fighter or the police officer does not know what is in that particular vehicle. That is why we were advocating something such as a computer system where you would use, for example, the license plate number of the trailer—which you can get at a distance with binoculars—put it in the computer. It would tell you, first of all, what is in that particular trailer, let us say, the same information you would have on a paper manifest, but you would not have to get the paper manifest.

And that would interface with a database and give you on site, Senator, the most important information. And that is, how to respond to the incident, what protective gear and clothing you should be wearing, what are the health risks, do you need to do evacuation, and various things like that.

And you obviously need the training to do this, but even with the best training in the world, if you do not have the information about what is in the vehicle, the training is meaningless in that particular sense.

The problem is, there are so many hazardous material substances, and they are increasing by thousands of different chemicals per week. And then you have multiple chemicals on the shipment that could possibly interact—it is sometimes very, it is impossible to mark.

Senator EXON. Well, Fred, I do not mean to put down computers, but you have got some convincing to do to this Senator——

Mr. NESBITT. And we would like to do that, Senator.

Senator EXON [continuing]. To make me believe that you could not have some serious errors, with all of this mass of information going in the computers.

I guess what I am trying to do is simplify this down. Is there no way, in your opinion, to simplify this down with signs that pop up after an accident like an airbag or—I am being facetious now.

Mr. NESBITT. I know.

Senator EXON. Are you convinced that there is no way to solve this problem without a computer network that, in my opinion, could have all kinds of errors connected? If you can not even get these people who are shipping these things to make identification on the trucks as to what is in there, then how much—I would suggest you are placing too much reliance on the computer screen.

Mr. NESBITT. Well, also incorporated in the bill, which goes back to your earlier point, two problems: one is the fines for violation of manifests and placards, sometimes it is $250 or less.

Senator EXON. Well, that is ridiculous. We can change that.

Mr. NESBITT. The bill that we are supporting raises them to between $10,000 and $25,000.

Secondly, even with inspection, I have talked to the Secretary in the State of Maryland, and they do inspections. But when they pull a truck in and it has a placard on it and it says "hazardous material", they open up the truck and it is all boxed, they have no way of knowing whether that is really hazardous material or not. They do not have the expertise to open it, to check it, to see if the manifests and the placard match what is in the vehicle. So they are equally frustrated.

I mean, we have thought long and hard about this. We do not have an answer, Senator, an immediate answer other than some

things that can be done. And we think that in an age of telecommunication that we should be looking at this particular aspect.

We would like to have the opportunity to show you some working models of computers and how we think computer mapping can be applied, and what is happening in the whole field that would be applicable to hazardous materials in transportation.

Senator EXON. Thank you. Mr. McKeon, getting back to the volunteer people here, it seems to me that it is not only scary but pretty frightening to think of volunteer firemen being kept up to speed, since they are volunteers, on all of these complicated techniques that we are going through.

What do you think might be done to—First set the fines so that they are meaningful. Then have some enforcement mechanism to put the fear of God into some of these people that they are fooling around with something that is very dangerous and we expect them, as responsible shippers—whether that is a transportation company or the individuals who are making the shipments—to maybe fix some responsibility back down the line.

Maybe we could—looking for deep pockets on these things, is it possible that we should place some responsibility for the selection of a transportation system or company on the person doing the inspecting or the person doing the shipping?

I think this is a very, very, big, broad picture that we have not gotten enough people involved in to make sure it works. And once again, I emphasize it is not only the safety of the people that you represent which I am concerned about, but it is a failure because of lack of knowledge or being unable to identify what the problem is that they can move as we would expect them to move as firemen to protect the public in general.

Unfortunately, it has come down to an exercise which is a good one. I suppose it has been a nuisance to an awful lot of people, but it is still the right thing to do to just evacuate large, large areas. And I think you have done a good job at that. But even after you have evacuated those large areas, unless we have a better system than we have now, you do not know what to do to clean up the proposition.

Now you are always going to have, I suspect, situations even under ideal conditions where somebody cannot get the manifest when they should be able to have the manifest. Or, like the situation we heard of in Pennsylvania, where it was going to an airbase, so they were convinced they were nuclear devices rather than furniture.

You are always going to have those kinds of things. But this whole hazardous material area, to me, is fraught with potential disaster and danger and we just cannot put up with it. So we need your advice in the future.

There will be some additional questions for the record. Is there anything else any of you would care to say, and I did pose a question to you, Mr. McKeon, and I would like to have you respond.

Mr. MCKEON. First of all, being in the business as a traffic manager, first of all I think that the common carrier that is out on the street—the reputable trucker—does an excellent job. And the problem is, it is human error when they come into the placarding

system. And I think that that should be real strong in your emphasis in trying to come up to a modern way of reporting system.

The computer system, yes, I can see it coming. If you take a look in the Chicago and Detroit area, now they have got computers aboard the trucks. And I believe if you check with the trucking industry, they had some problems where the union felt that they were looking and spying on the individual.

But now they have a system where they can identify where that truck is at all times and what is on board. But until that becomes across the United States, we do have a problem.

The serious problem is the independent trucker who does not—he violates every regulation there is, he hauls any type of load, he takes it anywhere he can, and he cares less where he is as long as he has got the dollar.

In being in the business of fire fighting and wearing the other transportation hat, that—if the placarding system could be updated so that we could put into modern communications later, this is the first step there should be.

As far as the manifest, they are on board and if the trucks go over, regardless of where you put them—any major shipping industry that is reliable, we have no problems with. It is the ones that are trying to move the chemicals in a milk truck or in an ice cream truck or in a furniture truck—and the other is you get the UPS trucks, which they are under no regulations. They carry everything from radiation to all kind of chemicals, and there are no markings, and I would dare to fear a UPS truck before I would fear a major truck on the road, because most of the trucks on the road are identified.

Senator EXON. Do you mean the United Parcel Service is carrying chemicals without any warning?

Mr. MCKEON. That is right, sir. It is marked on the box but there is nothing on the outside. Unfortunately, we have to find out the hard way, the bad way, and I have yet to see a fire be concerned on whether it is a career or a volunteer who puts it out.

Senator EXON. Can we rely or should we rely more on—now, I understand the milk truck you talk to, the individual entrepreneur who owns a truck. You cannot do anything about him. But, most of these trucks are driven by drivers who drive under contract or who own the vehicle that pulls the trailer. Is there sufficient concern among that group of people as to what they are pulling on the back end, and could we use, or should we be using, some of the weighing stations for maybe doing some police work in this area to help us out to identify those who are in violation?

Mr. MCKEON. Well, I think that is possible, but I think also on the part of a shipper, when that vehicle leaves, the proper identification of his product should so be marked on that trailer.

Senator EXON. I think we referred to that earlier. We have to have the shippers involved.

Mr. MCKEON. Definitely, because most of the reliable shippers we have no problems with, but it is also that trucker or that common carrier that is going on the edge that will take and haul anything, and again, could identify a false load, and I think that there ought to be a stiff penalty on those people.

Senator EXON. Gentlemen, thank you very much. We may have some additional questions for the record. We appreciate your being here. There is another meeting starting here in 2 minutes, and with that, I thank you. We are adjourned.

[Whereupon, at 1:13 p.m., the subcommittee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. NANCY LANDON KASSEBAUM, U.S. SENATOR FROM KANSAS

Mr. Chairman, I appreciate this opportunity to address the serious safety concerns raised in connection with the transportation of hazardous materials. In response to those concerns, Senators Danforth, Bond and I introduced legislation last year aimed at improving the safety of hazardous materials transportation.

Of particular concern to me has been the danger associated with the disposal of nuclear waste materials. There is no doubt that shipments of both high-level and low-level nuclear waste will significantly increase in the next ten years. I am deeply concerned that the Department of Transportation does not possess the resources it needs to ensure that nuclear wastes are transported as safely as possible. For this reason, I also introduced, with Senators Danforth and Bond, separate legislation which would mandate the hiring of additional safety inspectors in the DOT.

The legislation is simple. It authorizes such funds as may be necessary for the hiring of twenty additional inspectors who are specialists in nuclear matters. One would be allocated to the Research and Special Program Administration, which has the authority for implementing the Hazardous Materials Transportation Act of 1974, five to the Federal Railroad Administration, and five would be allocated to the Federal Highway Administration. The remaining inspectors would be allocated among the aforementioned administrations at the discretion of the Secretary of Transportation.

While this bill addresses the safety aspects of transporting radioactive materials, I believe the need for safe transport of all types of hazardous materials is clear. For this reason, I also strongly support the comprehensive legislation offered by my colleagues, Senators Danforth and Bond. This measure appropriately addresses many of the dangers involved with transporting any type of potentially harmful substance.

Mr. Chairman, Congress cannot afford to ignore the realties of the dangers involved with transporting hazardous materials. In 1988, there were more than 6,100 incidents where hazardous materials were unintentionally released during transport. The bulk of these accidents involved rail and highway carriers. This number will continue to grow unless we take steps now to ensure the safe and responsible transport of these dangerous substances.

STATEMENT OF HON. SHERWOOD BOEHLERT, U.S. REPRESENTATIVE FROM NEW YORK

"Accidents will happen." Regardless of the precautions taken by those who handle, transport and store hazardous materials, the industry is not immune from this fact of life. Firefighters and emergency response teams know the risks when they respond to a hazardous waste spill. It's an accepted part of the job.

What is unacceptable—to these brave men and women and the population in general—are the lax federal standards that now govern the transportation and storage of hazardous materials. When accidents occur, firefighters need information that allows them to respond quickly and accurately to prevent loss of life or property. Under current guidelines, that information is not readily available. It may take hours to acquire.

Federal law now requires shippers to place placards on vehicles to identify hazardous cargos. With the placards in place, firefighters can easily identify and clean up spills. But it's not unusual for these placards to be missing, burnt during the accident, or inaccurate. Then, emergency responders are forced to rely on the chemical industry's telephone answering service, CHEMTREC, for guidance.

Without a placard, however, CHEMTREC is virtually useless. We can't be satisfied with a hazardous materials identification system that needlessly jeopardizes lives—particularly when technologies to prevent such disasters are available, not to mention cost-effective.

That's why Congressman Applegate and I have introduced H.R. 2584, which would make use of one of these technologies. Our bill would develop a national computer system to track hazardous cargo shipments and provide quick, accurate information on how to dispense of potential spills. The legislation has already won the

support of the International Association of Firefighters, Fraternal Order of Police, and the AFL-CIO, just to name a few. In addition, over 220 of our House colleagues have signed on as cosponsors to the legislation.

Now, I'll be the first one to admit that H.R. 2584 isn't perfect. I've spoken with members of the chemical industry and a number of my constituents, particularly those in the home heating oil industry, and they've made some constructive suggestions that I feel would make H.R. 2584 a better bill.

But in the 20 odd years that I've worked on Capitol Hill I've yet to see a bill that is perfect at the outset. What's is important is that Congressman Applegate and I have initiated the debate and, in effect, drawn a line in the sand to dare our colleagues to come up with a better plan than H.R. 2584. To date, no one's crossed our line.

So I'm here today to ask our Senate colleagues to consider H.R. 2584 and work with the House Public Works and Energy and Commerce Committees to come up with improved hazardous materials tracking system. One that ensures when mistakes occur, our firefighters and emergency response teams will have the information they need to perform their jobs properly, safely, and immediately.

STATEMENT OF THE

NATIONAL ASSOCIATION OF SOLVENT RECYCLERS

The National Association of Solvent Recyclers (NASR) represents 40 large and small commercial solvent recyclers specializing in the recovery and reuse of solvent waste streams generated by a wide range of industries. NASR member companies represent 64 solvent recycling facilities located in 27 states. These facilities service large and small quantity hazardous waste generators located in the continental United States as well as Alaska and Hawaii. The solvent recycling facilities operated by NASR members are stringently regulated under federal and state hazardous waste management laws. In addition, NASR members comply with a host of federal, state, and local hazardous materials transportation regulations.

Collectively, our members recycled over 400 million gallons of spent solvents in 1989. Many commercial solvent recyclers use their own trucks to transport solvents, which are generally flammable and/or toxic, to and from their customers' facilities. Others ship material by common carrier. Therefore, NASR has a strong interest in the establishment of sensible federal hazardous materials transportation guidelines that protect the public safety and prevent accidents.

We respectfully submit the following comments regarding hazardous materials transportation issues.

Federal Routing guidelines - NASR believes state and local authorities should have a major role in determining safe hazardous materials shipping routes. However, they should make these determinations within federally prescribed guidelines that prevent designation of excessively circuitous routes which create more hazards than they prevent. The federal government must have overall responsibility for assuring consistency between federal objectives and local implementation. We believe federal guidelines are necessary to ensure the safe and efficient movement of materials.

Identification/inspection of vehicles that transport hazardous materials - Improvements in the identification system of vehicles that transport hazardous materials are ongoing. In fact, additional hazardous materials emergency response information requirements become effective September 1990: the implementation of a 24-hour emergency response number, standardization of chemicals names for shipping papers, and emergency response information (Emergency Response Guide) to accompany each shipment.

In addition, we are proponents of increased inspections to determine that vehicles are safe and properly identified, and that drivers are competent. We believe that such identification improvements, coupled with increased enforcement, will improve the safety of transporting hazardous materials.

Emergency Response - NASR members strongly advocate vigorous training programs for local emergency responders. Training is by far the best means of ensuring that public safety is protected and risk to responders is reduced should an accident occur. Therefore we support expanded emergency response training programs along with federal matching grant programs. These programs should be administered by state emergency response networks, who are in the best position to assess the needs of local response groups. However, NASR members want assurances that the fees paid by hazardous materials shippers and carriers are directed to emergency response training programs and not to general revenues or other government funds unrelated to hazardous materials transportation.

NASR does not support proposals to require all hazardous materials shipments to be registered in a national centralized reporting system and data center. We question the effectiveness of such a burdensome and unproven system.

We support efforts to examine current emergency response training capabilities and needs; and to thoroughly evaluate the capabilities and costs of alternative hazardous materials identification and tracking systems.

NASR believes it is good business practice to prevent transportation accidents, and in the case of an accident, it is critical to have properly trained response personnel. We support responsible efforts which accomplish these goals. NASR appreciates this opportunity to share its comments.

34-864 0 - 90 - 10

BEFORE THE

UNITED STATES SENATE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

WRITTEN STATEMENT

OF THE AMERICAN TRAFFIC EXCHANGE

Prepared by: Paul Carrano, President
American Traffic Exchange, Inc.
P. O. Box 7040
Greensboro NC 27417

I. INTRODUCTION

I am Paul Carrano, president of American Traffic Exchange, Inc. (AMTEX), whose administrative offices are located at 1609 West Magnolia Boulevard, Burbank CA 91506. AMTEX is a non-profit corporation formed in 1988 by transportation brokers to serve primarily as their surety source, and also to provide an "exchange" for credit information concerning broker\members to shippers, carriers, and all who would desire a "credibility check-point" prior to business activity with a broker\member. AMTEX also provides claims assistance to all involved parties, including the judiciary.

We appreciate the opportunity to present this testimony as part of the written record for the hearings concerning HR 3243 to amend Title 49 of the U.S. Code regarding the collection of over-payment or undercharges on shipments via motor common carriers.

II. STATEMENT OF INTENT

It is the intent of this organization to illustrate the mistake by Congress when they did not repeal the filed rate doctrine of 1935 when Congress deregulated motor carriers with the motor carrier act of 1980.

AMTEX wishes to give testimony at these hearings in support of legislation that will eliminate the filed rate doctrine, thus forever eliminating the costly abuse to the economic infrastructure of our national transportation system, U.S. shippers, and ultimately the nation's competitiveness.

This debauchery of justice has taken place as a result of the anachronism known as the "filed rate doctrine," which has allowed unscrupulous opportunists a loophole through which they can suck hard-earned dollars from honest shippers through a wall of intended fairness we call regulation. Indeed these opportunists will suck the very life from every industrial shipper and broker, large or small, bankrupting most if they are allowed.

If the filed rate doctrine and the Maislin decision are not reversed immediately with retroactive benefits to the nation's shipping community, the effect will be devastating to the U.S. economy.

It is further the intent of AMTEX to illustrate the NON-NEED the motor carrier industry has for rate regulation of any sort.

In the alternative, we support TBCA's request of ICC referral; however, AMTEX contends this suggested remedy merely

prolongs a costly injustice. Such a process not only will continue to devastate our country's ability to compete in world commerce but could possibly backfire as Maislin did to cause more permanent damage to America's competitive capabilities.

III. STATEMENT OF OPINION

Interstate commerce rates and rating have got to be totally deregulated (unregulated). The half-step that Congress took when creating the Motor Carrier Act of 1980 has served its purpose. We now know the American transportation system can work effectively in an unregulated environment.

Congress must now finish the job, and get the American shipper out of this costly nightmare developed by the Supreme Court's decision of Maislin. This half-step experiment into deregulation by Congress, an appropriately cautious attitude at the time, has now turned into something reminiscent of "the night of the living dead." We have an abomination which should be dead attempting to devour us, American manufacturers, shippers, and brokers; and indeed it will devour us by draining our energy, our ability to produce, and to compete in the world market of today.

America simply does not have a budget to support motor carrier rate regulations any longer. The Department of Transportation has proven it can and will guard our safety and transportation infrastructure. America no longer needs someone to guard our businesses, small and large, against service

failures or price discrimination as it did in 1887 and 1935, except possibly in the railroad arena. There are more than enough carriers and would-be carriers to serve literally every shipper's needs no matter how diverse they are.

We have learned since 1980 the problems that will evolve from an economically unregulated national transportation system relative to motor carriers will be those of an antitrust nature, and they are best handled by the Department of Justice. In that respect and during this test period of deregulation, we have already seen charges of predatory pricing and we should suspect, as in all business circles, the largest of corporations may attempt to misuse their girth to sway markets and market share in an unfair manner. A keen awareness and quick response by the DOJ to these abuses will restrain, if not stop these attempts.

We have also learned since 1980, America no longer needs, NOR CAN AFFORD, rate regulation. American business people are now sophisticated enough to negotiate their own service needs and fees for same. Finally, their needs will be amply met in the free market place, as is attested to by the Interstate Commerce Commission. Indeed, the ICC is investigating the veritable need for "Rate Bureaus" and their antitrust immunity as these hearings take place. The time has come for Congress to act, and the Commissioners of the Interstate Commerce Commission, we believe, are inclined to agree-- there is no real value for the nation in perpetuating the filed rate arguments, and most possibly in the perpetuation of any motor carrier regulatory function as they are currently applied by the ICC except in the case of proof of liability insurance, and that can be monitored by the DOT as part of their safety program.

Therefore, AMTEX presents the only logical solution to the abuse (the Maislin decision) to our system of interstate commerce is to abolish the antiquated filed rate doctrine of 1935. It no longer serves the purpose for which it was created.

We the members of AMTEX herein pray that Congress immediately reverses the Supreme Court's decision on Maislin and releases brokers, shippers, and the U.S. economy from the costly confusion caused by the filed rate doctrine as it applies to interstate motor carriage by ultimately repealing the filed rate doctrine in the next congress.

IV. STATEMENT OF FACTS

1. The filed rate doctrine was written and enacted by Congress to avoid discrimination of shippers by carriers. The possibility of discrimination was based on an inadequate and/or inefficient number of carriers to support the current level of business in 1935. It was a time when such a shortage of motor carriers could have led to discriminatory pricing and harm to a young country's ability to grow its economic and commercial prowess.

2. With the improved highway systems that have developed in our country and the small business boom, there are thousands of carriers for each shipper to choose from. It is no longer a "buyers over" market, but rather in the motor carrier sector of our national transportation system, we have a "sellers over" market or in other words, a surplus of motor carrier service

suppliers which promises no shipper will ever suffer a rate/service discrimination.

3. The ICC regulations over motor carriers actually restrict trade. Prior to 1980, there existed less than 6,000 motor carrier authorities issued by the ICC to serve the nation's shippers. Since 1980, over 90,000 authorities have been issued by the ICC, proving that the lessening of regulations has spawned new businesses to develop. It can also be then concluded that the nation will enjoy even more motor carrier service suppliers if the motor industry was totally unregulated, except for safety.

4. The DOT is ready, willing, and able to take over any and all insurance responsibilities now handled by the Interstate Commerce Commission.

NATIONAL GOVERNORS ASSOCIATION

Terry E. Branstad
Governor of Iowa
Chairman

Booth Gardner
Governor of Washington
Vice Chairman

Raymond C. Scheppach
Executive Director

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October 16, 1989

The Honorable J. James Exon
Chairman
Subcommittee on Surface Transportation
Committee on Commerce, Science,
and Transportation
United States Senate
SH-428 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enactment of hazardous materials legislation is a high priority for the National Governors' Association during this Congress. NGA recently amended its policy position on the transportation of hazardous materials. A copy of the policy position, adopted at the NGA annual meeting this summer, is enclosed.

This policy statement should be useful in the development of your committee's proposal to reauthorize the Hazardous Materials Transportation Act. NGA believes that a reliable, equitable source of funding for activities including emergency response, training, and enforcement should be part of any legislative package.

As the policy notes, NGA advocates establishment of a national fund to help states and localities operate these essential activities. However, a national fund, no matter how large, would be inadequate to address the entire array of financial requirements in regulating hazardous materials. For this reason, among others, NGA would oppose preemption of states' authority to assess their own taxes and fees.

The nation's Governors understand the complexity of the task before you in achieving consensus on comprehensive legislation. Yet, the importance of such action to enhancing safe and efficient transport cannot be overstated. We stand ready to work with you to address this critical issue.

If you or your staff have questions or comments about the NGA policy position, please contact Charilyn Cowan of the NGA staff at (202) 624-7814.

Sincerely,

Governor Kay A. Orr
Chairman
Committee on Transportation,
Commerce and Communications

Enclosure

GRAND LODGE
FRATERNAL ORDER OF POLICE

DEWEY R. STOKES
NATIONAL PRESIDENT

520 S. HIGH ST. • COLUMBUS, OHIO 43215
614-221-0180

July 25, 1990

Honorable J. James Exon
Chairman,
Senate Commerce Subcommittee on
Surface Transportation
SH-428 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the National Fraternal Order of Police (NFOP), I would like to take this opportunity to commend you for holding this hearing in preparation for the drafting of legislation designed to strengthen the laws governing the transportation of hazardous materials.

The NFOP, representing over 211,000 law enforcement professionals nationwide, is the largest police organization in the United States. Simply stated, the NFOP represents the cop on the street -- our members are generally the first emergency responders present at a situation that is life-threatening, whether it be criminal in nature or an accident involving hazardous materials. As such, our members have taken the position that legislation in the area of hazardous materials transportation is a priority item on our agenda for the 101st Congress.

Of primary importance to the NFOP is legislation introduced in the Senate by Senator Howard Metzenbaum, S 2318, which would, among other things, authorize the Department of Transportation to contract with the private sector to establish a central reporting system and data center for hazardous materials shipments. In addition, this bill would authorize a study of the flow of hazardous materials across the country.

Mr. Chairman, we all have heard the depressing litany of statistics involving the transportation of hazardous materials in this country: Every day more than 500,000 shipments of this material are made on the nation's highways, shipping lanes and railroads. More than 1.5 billion tons of gasoline, chemicals, explosives and hazardous waste are transported across the country each year. The Office of Technology Assessment has pointed out that no one federal agency has the information necessary to properly oversee these shipments or the ability to formulate

federal guidelines for them. Moreover, it has certainly been well-established that the current system of placarding and the voluntary CHEMTREC program are inadequate in terms of providing emergency response personnel with necessary information. Although we all know that while the statistical risk of a hazardous materials incident is relatively small, just one accident not properly handled by emergency response personnel can lead to a devastating loss of life.

Police and firefighters are called upon daily to place themselves in a variety of situations that are life-threatening. We do not question that this is a legitimate part of our sworn duties in protecting society at-large. What we do question, however, is the inability of the federal government to do all within its power to provide us -- the police and firefighters -- with the necessary tools to do our job safely and efficiently. S 2318, by establishing the basis for developing a national hazardous cargo shipment tracking system, would go a long way toward ensuring that emergency personnel would have access to current data on the nature of the danger we are called upon to confront and the techniques recommended for meeting that danger.

The opponents of this legislation, largely the chemical manufacturers using the trucking industry as their stalking horse, continue to raise problem after problem with S 2318. We have held several discussions with opponents of this legislation to address each and every one of their concerns, and where there have been valid criticisms expressed, we have made adjustments. It is always easier to be against anything rather than to stand for something, Mr. Chairman, and being against everything just about summarizes the position of our opponents on this issue. Those opposing S 2318 are not interested in finding answers, only in perpetuating the current placarding and identification systems that currently jeopardize the safety of police and firefighters.

We stand ready to work with you, Mr. Chairman, and the members of your Subcommittee in a good faith attempt to craft a solution to this problem. We believe that the gravity of the threat posed by not addressing this issue precludes any other bargaining posture, and we also believe that the hearing record developed on this subject will support our perspective.

I appreciate the opportunity to advise you and your Subcommittee of the position of the NFOP and I am pleased that this letter will be made part of the official record of today's hearing.

With kind personal regards, I remain

Sincerely,

Dewey R. Stokes
National President

DRS/SHB/ms

CWTI
Chemical Waste
Transportation
Institute

July 26, 1990

The Honorable J. James Exon
Chairman
Subcommittee on Surface Transportation
Committee on Senate Commerce,
Science and Transportation
Room 428, Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing on behalf of the Chemical Waste Transportation Institute (CWTI) regarding your July 25, 1990 hearing on issues surrounding the reauthorization of the Hazardous Materials Transportation Act (HMTA).

The CWTI is part of the National Solid Wastes Management Association, an association that represents more than 2,500 waste management companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members are both private and public for hire carriers that operate in interstate and intrastate commerce. The CWTI is the only organization that solely represents companies engaged in hazardous waste transportation.

We appreciate efforts of the Subcommittee to proceed with legislation to reauthorize the HMTA, and we have been pleased to support the actions of the Subcommittee to date to advance policy mandating safety audit qualifications to transport hazardous materials.

We have a strong interest in substantive amendment to the HMTA in the areas of federal preemption, routing, registration, reporting requirements, and shipment prenotification. With respect to each of these issue areas, we share the concerns expressed at the hearing by witnesses representing the American Trucking Association and the Chemical Manufacturers Association. There are, however, two issues of concern to the CWTI that were not addressed by any of the witnesses at the hearing. These issues are state permitting and registration programs, and the use of fees and assessments collected by states from the regulated community.

State Permitting and Registration Programs

Thirty-one states have some type of permitting program for transporters of hazardous waste. Only a few states have a similar program for the transportation of hazardous materials.

NSWMA
An Institute
of the National
Solid Wastes
Management Association

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Printed on Recycled Paper

Historically, the number of states requiring permits, both for hazardous waste and hazardous materials, has been increasing. This trend shows no sign of abating.

In some cases the permitting process is fairly rational. An application describing the operation is filed, financial responsibility is documented, and a permit is issued. In other states, the process can involve the submission of thousands of pages of documents, the finger-printing of key employees, payment of tens of thousands of dollars in "fees", and then waiting up to five years while the agency evaluates the application. Examples of the diversity of state permitting applications are enclosed.

It becomes extremely burdensome for a transporter to have to conduct this activity thirty-one different ways, and then repeat the process annually. There are not at this time any cooperative agreements in place for a state to grant reciprocity to a carrier domiciled and permitted by another state.

Moreover, there has been an increasing number of local political jurisdictions that have implemented permit requirements that also cost several hundreds of dollars, and require such things as police escorts through town, posting of multi-thousand dollar bonds, as well as insurance filings. In most cases, these ordinances serve to divert the through-movement of waste hauling vehicles to neighboring jurisdictions. With thousands of local jurisdictions nationwide, the potential for devastating burdens on commerce if such permitting goes unchecked is obvious. At a minimum, local jurisdictions should be prohibited from enacting, issuing, and enforcing their own permitting laws or ordinances.

At the state level, the CWTI advocates the development of a standardized application form and process for those states that choose to permit hazardous materials, including hazardous waste, transporters. The development of reciprocal agreements could save a considerable amount of tax dollars that are now being spent by the states to administer their disparate permitting programs. The CWTI urges the Subcommittee to consider language developed by Congressman Norman Mineta, Chairman of the House Surface Transportation Subcommittee, to provide a grant to various associations representing state and local interests to develop uniform state registration and permitting forms and procedures. [Please see the enclosed document: MINETA013, section 17, July 21, 1990.]

State Use of Fees and Assessments

Regulations arising from the implementation of the Superfund Amendments and Reauthorization Act, P.L. 99-499, have delegated responsibilities to states and localities for emergency response planning and training. [Sections 301 and 303, and 126(d)(4), respectively] Although these requirements have led states and

localities to produce plans since October 17, 1988, and to train emergency responders since March 6, 1990, debate has arisen over how to finance these activities. The states have asked for federal assistance in the form of a tax or fee on the transport of hazardous materials, as well as the right to levy their own fees and assessments to finance these activities. The CWTI is concerned about the unfettered ability of states to impose fees and assessments on the regulated community. Our concern is based on the findings of surveys the Institute has conducted. The latest survey (December 1988) showed that:

- o Fees collected for hazardous waste transportation alone in each state's latest accounting year totalled $11.5 million. This figure does not include costs associated with various state bonding requirements;

- o The annual assessments per state ranged from $20 per company to a high of $750 to operate a single hazardous waste truck. Most of our members operate in more than one state and are subject to multiple assessments; and

- o The uses to which these funds were put vary. The most common uses were to finance a state's hazardous waste program, including remedial cleanup operations, and as deposits to "general revenues." Only three states listed "highway" or "motor carrier" uses of the funds.

While substantial amounts of money are being collected from the hazardous waste transportation industry, the magnitude of incidents involving hazardous wastes are quite low. For example:

- o In the five-year period covering 1983-1987, the Department of Transportation reported 529 incidents involving hazardous waste transportation. In no case did any state have more than 10 hazardous waste incidents per year, and 30 states as well as the District of Columbia reported less than 10 incidents during the five-year period;

- o The reported dollar damage from these hazardous waste incidents was $3.29 million, or an average of $657,724 annually;

- o These statistics contrast sharply with data that show that there were over 28,000 hazardous materials incidents during the five-year period. Twenty-two states averaged over 100 incidents per year, and no state reported less than 10 incidents during the five-year period.

The message supported by these data should be obvious. There is little relationship between the fees collected and the actual risk posed by those from whom they are collected.

Moreover, when compared to the results of a similar survey the Institute conducted 18 months earlier, the annual collection of hazardous waste fees had increased by $7.5 million.

It may be that within a given state higher fees are necessary to support enforcement or response activities because of experience history with incidents or the number of regulated carriers traversing the state. However, we have approached various states and state associations to request a more detailed accounting of these monies with no success. In the Institute's opinion, fees should not serve as a barrier to market entry or be diverted to uses unrelated to improving safety in the transport of regulated materials, such as general revenues or emergency response at fixed facilities.

Both Congressman Thomas Luken, Chairman of the House Transportation and Hazardous Materials Subcommittee, and Congressman Mineta have addressed this issues, albeit differently, in the proposals they have advanced. [Please see enclosed HR 3520, section 14(b) and MINETA013, section 7(b)(7), July 21, 1990, respectively.] Before new funds are sought for emergency response or other safety or enforcement programs, states should be asked to verify that the monies they are currently collecting are being used for relevant transportation purposes.

I appreciate the opportunity to offer these comments for the Subcommittee's consideration.

Sincerely,

Bruce Swonger

Bruce Swonger
Chairman

enclosures 1/

cc: Robert Holleyman
Gerri Hall

1/ The enclosures were not reproducible.

National Conference of State Legislatures

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Lee A. Daniels
House Minority Leader
Illinois
President, NCSL

Patrick J. O'Donnell
Clerk of the Legislature
Nebraska
Staff Chair, NCSL

William T. Pound
Executive Director

July 30, 1990

Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science
and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you very much for the opportunity to respond to additional questions on hazardous materials transportation. Please accept my sincere apologies for my inability to address the Committee during last week's hearing.

I am enclosing my responses to the follow-up questions as well as the statement I had planned to present on behalf of the National Conference of State Legislatures. Please note that wherever responses to the Committee's questions are in variance with the NCSL position, the views espoused are my own and do not reflect the position of NCSL membership.

However, the more specific nature of my responses will be among those areas under discussion during the Task Force's deliberations next week. The NCSL Task Force on High Level Radioactive Waste and Hazardous Materials Transportation will be reviewing all legislative proposals on hazardous materials transportation regulation. Hopefully, we will be formally adopting some revisions to existing policy which better define NCSL positions on emerging federal policy options. We will forward any policy revisions to your Committee.

In the meantime, I urge you to carefully consider the genesis of state regulation over hazardous materials transportation and not unwarrantably abridge existing autonomy. Please do not hesitate to contact me if I can be of further assistance to the Committee in its deliberations.

Sincerely,

Thomas J. Hickey
Chairman
NCSL Task Force on High Level Radioactive
Waste and Hazardous Materials Transportation

Responses by Senator Thomas Hickey

to

Committtee on Commerce, Science and Transportation

1. In the interest of uniformity, do you believe that the current method of settling conflicts between DOT, State, and local hazardous material transportation regulations is effective? What changes, if any, in this process would you recommend?

The current inconsistency ruling process lacks procedural fairness and often produces decisions flawed in their substance. Inconsistency rulings also are inconsistent over time. An example is IR-15 involving a $1,000 fee Vermont established for radioactive materials shipments which was found to be inconsistent. In IR-17 a few years later, a similar Illinois fee was found to be consistent. In summary, the current process is not effective.

An alternative process would be a binding administrative law process utilizing normal judicial procedures including appeal. Such a process would be established in consultation with the states.

2. What level of enforcement do you believe State officials need related to hazmat violations? How much uniformity do you believe is necessary between Federal and State enforcement efforts?

State officials should have the authority to conduct investigations; perform surveillance; and assess penalties, as well as request injunctive relief for hazardous materials violations for all modes of transportation.

Federal and state enforcement efforts must be essentially uniform and not duplicative. States with the capacity should receive authority from the federal government to enforce federal regulations. State-federal partnership in this area is crucial.

3. What are your views on that portion of the Administration's bill which proposes to clarify Federal authority over subjects such as designation, classification and marking of hazardous materials; shipping documents; written notification and reporting of releases; container standards; and highway routing?

Federal authority over subjects like designation, description, classification and marking of hazardous materials; shipping documents; written notification and reporting of releases, and container standards is acceptable in the interest of uniformity.

Routing, however, should not be preempted by federal authority. An appropriate role for the federal government in routing would be in the issuance of guidelines for states to consider in the designation of highway routes. States, then, would designate routes in consultation with local governments and enforce the routing designations.

4. What types of emergency response training is particularly needed at the State and local level?

Emergency response training is needed in all areas: first responses, command and control, train the trainer, etc. But even more critical is emergency preparedness activities designed to reduce or eliminate the need to respond. Legislation should consider the following:

- Grant allocation to states to supplement the development of state and local training institutions which can provide one-stop shopping for all types of emergency response training, and keep pace with the need for ongoing training.

- State-organized regional response centers may be one cost-effective solution or alternative to the duplicative and sunk costs associated with the creation of numerous training institutions. Manpower, equipment training and periodic drills/exercises must be part of such a center.

- Thoroughly designed training and education programs, which attempt to cross-fertilize and tie together the multitude of federal training programs. The various federal agencies should consult and develop compatible and complimentary training material in cooperation with state officials.

- Interjurisdictional coordination between and within states regarding the collective provision of training courses.

- Public education to help state officials in communicating the risks and hazards of the multitude of hazardous cargo on the road today.

5. What are your thoughts about creating in each State a SWAT team which has been expertly trained and equipped to deal with catastrophic hazmat incidents?

A "SWAT" team for emergency response seems to make sense in examining the cost-effective allocation of resources. Some large states, both in population and in land area, may require multiple teams. The concept of a regionalized response capability with quick deployment ability is appealing.

6. Do you have suggestions about how we can improve the process of creating a single set of reasonable hazmat transportation regulations; a system that will be acceptable to the Federal government and the State and local governments?

The approach outlined in the House Public Works and Transportation Committee bill has merit. Put together a joint study group (NCSL,NGA,NLC and NCM) to recommend uniform registration and permitting procedures. Broader representation may be appropriate for a group that would "create a single set of reasonable hazardous materials transportation regulations." Also DOT Secretary should be required to issue regulations implementing recommendations of the joint group.

STATEMENT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

The National Conference of State Legislatures, which represents the nation's legislatures, appreciates the opportunity to provide written comments for consideration by the Subcommittee on Surface Transportation in reviewing proposed changes to the Hazardous Materials Transportation Act.

NCSL has recently renewed its focus on the regulation of hazardous materials transportation in creating a Task Force on High Level Radioactive Waste and Hazardous Materials Transportation. The Task Force is charged with developing recommendations on legislative proposals in an effort to update the existing policy statement on which I must rely for my statement today. Positions taken in this statement are based on the principles embodied in this policy.

This policy has provided the basis for NCSL's position on federal regulation of hazardous materials transportation for almost a decade. In the absence of substantive changes to the law, concerns that appeared on the horizon early on are still with us today. However much all concerned may be in agreement on deficiencies in current law, the states are very much concerned about efforts underway to address these shortcomings through the usurpation of traditional state authority.

While NCSL supports the goal of regulatory consistency among all governmental agencies, a rigidly uniform federal program is an anathema to the states. In considering possible refinements to hazardous materials transportation regulations, NCSL urges that the following principles underlie modifications to the Act:

1. The role of the U.S. Department of Transportation should be clearly defined to those functional areas demanding technical standards. Simply put, DOT should have regulatory authority over the "who" and "what" of hazardous materials transportation.
2. Any performance and routing standards promulgated by the federal government should allow for variable state and local standards so long as commerce is not unduly burdened or safety jeopardized.
3. There is a need for federal support in financing state enforcement activities, as well as in data collection and dissemination.
4. Adequate federal funding should be available to supplement state and local emergency response activities.
5. Where information is not available to effectively prevent and respond to hazardous materials transportation incidents, the federal government should undertake studies.

Clarifying the role of DOT does not necessarily mean expanding it or providing open-ended authority such as that embodied in "action necessary to encourage uniformity." NCSL is particularly concerned about the prospect of relegating states to the role of uncompensated administrative arms of the federal government.

The roles of all federal agencies should be clarified to distinguish "lead" agencies in any regulatory arena. A clarification of intergovernmental roles should be made as well. The appropriate federal role should be to offer technical assistance and coordinate, not subjugate, state regulatory activities.

The aforementioned areas where uniform standards are desirable should be provided technical criteria. In any area to be classified as a "uniform subject," the states should retain the option of petitioning for a waiver of federal preemption. States should not be precluded from regulating any aspect of a uniform subject where there is an absence of federal regulation.

NCSL POLICY *"The role of DOT should be more clearly defined. Specifically, DOT should be mandated to promulgate technical standards and criteria for the manufacture of hazardous materials containers, hazardous materials classification and definition, description, packaging, marking, labeling, documentation, and placarding of equipment for transportation. The requirements should be nationally uniform, and DOT should be directed to assume full enforcement responsibility.*

Under Section 112(b) of HMTA, states are permitted to enact differing regulations as long as the regulations do not "unreasonably burden commerce" and provide for an equal or greater level of protection. States must retain authority to enact reasonable restrictions which are justified by unique circumstances. Such efforts cannot be presumed an "unreasonable" burden on commerce if that burden is merely incidental to a larger safety concern. Decisions on routing are best addressed by the states, in consultation with affected parties, utilizing federal guidelines.

State routing requirements need not be identical or fundamentally interchangeable to be consistent with federal standards. The test for regulatory consistency should be compatibility. Legislation which seeks to extend the role of DOT to preempt state route determinations is an intrusion on state responsibility for ensuring public safety. An appropriate exercise of federal authority would be to collect and disseminate state routing decisions.

To this end, NCSL does not support legislative proposals to replace the "inconsistent" standard with mandates that state requirements be either "the same as" or "not different from" federal requirements. The problems with the current inconsistency standard are inherent to the administrative processes, not the terminology. Improvements in the petition process could provide an effective remedy for lengthy challenges on state and local consistency with federal regulations.

NCSL POLICY "DOT, in conjunction with the states, should be directed to promulgate performance and routing standards for hazardous materials shipments in commerce. This provision recognizes that unique local circumstances may justify the promulgation of certain state and local regulations. Such regulations should be allowed to stand if they meet the performance standards and do not impose an undue burden on commerce."

Overall federal enforcement efforts need to be increased. There is a direct correlation between inadequate federal enforcement efforts and the history of state and local regulatory aggressiveness. While industry-sponsored response teams have provided a stop-gap means of emergency response, even the most sophisticated emergency response system is less satisfactory than successful prevention.

> *NCSL POLICY "There should be federal assurance of adequate and predictable financial assistance to support training of state enforcement personnel and development of adequate state data systems if the federal government shifts to the states responsibility for comprehensive enforcement of hazardous materials transportation regulations for shipments in commerce."*

One of the most important areas to be addressed in HMTA amendments is support for state and local training and equipment needs. National training standards should be developed and minimum equipment needs inventoried.

Various legislative proposals include provisions for levying a federal fee on hazardous materials transporters in order to fund a national emergency response grant program. While this method of supplementing state and local emergency response programs has merit, a federal financing scheme must not preempt existing state and local fee structures.

For purposes of administering any new grant program, the states are the appropriate governmental body to oversee the disbursement of funds to political subdivisions. Mandated pass-through requirements only limit the states' ability to coordinate and consolidate emergency response programs.

NCSL would support a national fund financed by the hazardous materials transportation industry as an "adequate and predictable" source of revenue. Diversions of existing transportation trust fund monies for training and equipment needs is unwarranted.

It would be acceptable to make state eligibility for federal grant monies contingent on a state foregoing duplicative fees for the same programmatic purpose. However, in the absence of a state or local levy on transporters, it would be difficult to sustain a "maintenance of effort," the customary federal grant criterion. A state is not likely to utilize general funds to maintain effort for a program previously funded through a user-fee based collection system.

Of grave concern to NCSL are proposals which would require non-federal fines, fees and penalties to be "reasonable" and used "exclusively" or "solely" for hazardous materials transportation-related needs. This language dictating the nature and usage of these monies constitutes a violation of a state's fiscal integrity. NCSL strongly opposes this type of restriction.

This approach invites inappropriate subjective judgments about state-determined program structure and funding levels for hazardous materials transportation activities. There have been specific standards applied by the courts which provide adequate protection against misuse of these funds.

> *NCSL POLICY* *"The federal government should assure that adequate and predictable funding is available for the development of state and local emergency response programs and for the training of emergency response program personnel."*

Wherever there is a scarcity of data available, it stands to reason that imposing federal standards is premature. The federal government could effectively allay the concerns of transporters over inadequate route information by collecting and disseminating state route designations.

A comprehensive effort to collect and maintain a record of hazardous materials shipments, cargo flow and accident risk is essential to adequate emergency response preparation. A national registration program seems an acceptable approach to accomplishing this goal, but only to the extent that all transporters are covered.

Proposals to computerize extensive data regarding hazardous materials shipments, while well-intended, should be approached cautiously. Of particular concern to the states in the area of computerized information bases is the cost of obtaining or conforming computer hardware and software in order to access the data base.

Legislative proposals to set up a computerized information network fully anticipate the cost to be borne by hazardous materials transporters. Assuming there will be a significant cost to the emergency response community in accessing the system, must this major expense be picked up by the states? Any such national data collection and dissemination system should be fully financed.

NCSL POLICY *"State and local enforcement of the federal hazardous materials transportation regulations and state and local programs to deal with hazardous materials transportation incidents are dependent upon information provided by shippers and carriers of hazardous materials. NCSL believes that the federal government should undertake a study to determine:*

1. *How such information is obtained (e.g., licensing, registration, notification, accident reporting requirements);*
2. *The relationship between state information requirements and states' ability to undertake enforcement and emergency response programs; and*
3. *The most appropriate level of government to collect such information.*

In all, the overriding concern of the National Conference of State Legislatures is the ever-present threat of federal preemption in areas of traditional state authority. There is, in fact, evidence that federal-state regulatory partnerships have enhanced compliance by regulated highway and pipeline industries. Concurrent authority is not a contradiction in terms.

However, there are some distinctions that should be drawn. The federal government has a legitimate role in mediating interstate disputes, and the states, in resolving intrastate conflicts. While the federal government constitutionally governs interstate commerce, this authority has been extended to that which is intrastate in nature. Likewise, states must maintain authority to oversee interstate transport while within the state's borders.

In summary, the federal government should exercise its responsibility to provide the states with leadership in the regulation of hazardous materials transportation. The appropriate role for the federal government should be: to provide guidelines for route designation; to collect and disseminate information needed by the states for emergency response preparedness; and to provide technical and financial assistance for coordinated training and enforcement activities.

United Parcel Service 316 Pennsylvania Ave., SE. Washington, D.C. 20003
(202) 675-4220

August 8, 1990

Senator James Exon
330 Hart Senate Office Building
Washington, D.C. 20500

Dear Senator Exon:

We are aware that certain statements were made at a recent hearing before the Subcommittee on Surface Transportation that misrepresented the practices of United Parcel Service and current regulations governing the transportation of hazardous materials. This letter is therefore intended to correct the inaccuracies for the record.

During the July 25, 1990 hearings before your committee, Mr. Robert McKeon, of the National Volunteer Fire Council, indicated that UPS shipments of hazardous materials were not regulated and that UPS handled "packages containing radiation."

Current USDOT regulations have long restricted the type, quantity, and identification of small quantities of hazardous materials. USDOT also precludes the co-mingling of certain hazardous materials in small packages within the same load. All hazardous materials are required to meet stringent labeling and packaging performance standards before they can be tendered to a motor carrier. UPS handles many thousands of hazardous materials in small packages each day, ranging from soap detergents to aerosol spray cans. Some of these materials are corrosives and class C explosives which have a low degree of hazard. The vast majority of our hazardous material commodities are normal household products. In some cases, we handle food products that are shipped with hazardous materials such as Omaha steaks, which are wrapped in styrofoam and packed with a hazardous material, known as carbon dioxide solid, or dry ice.

We have attached a representative list of commodities which are defined as hazardous materials and are carried

by UPS and other small package carriers. These commodities are co-mingled with other packages in our delivery vehicles.

It is important to note that UPS vehicles carry small quantities of hazardous materials restricted to those that have a low degree of hazard. Because of the nature and quantity of the hazardous materials we carry, we never reach the threshold for placarding of the vehicle. In a typical tractor trailer load of over 2,000 packages, our studies have indicated that less than ten packages in the average load are classified as hazardous materials. For purposes of identification to emergency response personnel, the vehicle would therefore not be placarded. However, the driver of the vehicle is required to carry on his person the bills of lading or shipping documents. To obey this rule, UPS has implemented a system of documentation called the five-part form. These forms identify the hazardous material, chemical identification, quantity and a telephone number to call in the event that more information is needed.

UPS is not aware of any problems that have been raised with respect to the ability of emergency responders to identify hazardous material commodities contained in our vehicles.

To clarify one final point, UPS does not handle radioactive materials other than Radioactive I. These are items such as radioactive isotopes which go into a xerox copier machine or smoke detectors that might be delivered to hardware stores. UPS does not handle radioactive wastes or, for that matter, waste of any kind.

We appreciate the opportunity to clarify that UPS scrupulously obeys the current regulations for the transportation of small packages of hazardous materials. We are also pleased to set the record straight on the type of radioactive materials that UPS does handle.

Sincerely,

Arnold Wellman

Arnold Wellman
Manager, Public Affairs

Attachment

REPRESENTATIVE LIST OF COMMODITIES DEFINED
AS HAZARDOUS MATERIALS CARRIED BY
UPS AND OTHER SMALL PACKAGE CARRIERS.
THESE COMMODITIES ARE FREQUENTLY
CO-MINGLED WITH FOOD PRODUCTS

Cosmetics - Mary Kay, Avon

Cleaning detergents - Amway Products

Aerosol Sprays - Hair spray, cleaners, deodorants

Paints - (Non-water base) - Oil, turpentine, lacquer

Pesticides - Weed Killer, Burpee seed

Oxygen Bottles - Invalid home care / Hospitals

Small Arms Ammunition - Olin Mfg.

Cigaret lighter & Fluids - Bic

Book Matches -

Smoke Detectors -

Highway Flares -

Silver Polishes -

Stereo Speakers - (Magnets)